

89-816

Supreme Court, U.S.  
FILED

NOV 16 1989

JOSEPH F. SPANIOL, JR.  
CLERK

No. 89-

In The  
Supreme Court of the United States

OCTOBER TERM, 1989

CITY OF LOS ANGELES;  
BOARD OF PENSION COMMISSIONERS  
OF THE CITY OF LOS ANGELES,  
*Petitioners,*

v.

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
LOCAL 112, IAFF, AFL-CIO;  
LOS ANGELES POLICE PROTECTIVE LEAGUE;  
RONALD DEAN GRAY; DAVID BACA, JR.;  
GREGORY PAUL DUST; BILL G. MCDANIEL;  
and FRED A. TREDY,  
*Respondents.*

PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant  
City Attorney  
1700 City Hall East  
Los Angeles, CA 90012

JOHN F. DAUM\*  
KAREN R. GROWDON  
SHARONA HOFFMAN  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 669-6000  
*Counsel for Petitioners*

\* Counsel of Record



## QUESTIONS PRESENTED

1. Whether the Contract Clause limits the right of state and local governments to amend statutes defining the level of deferred compensation to be paid to public employees in the form of pension benefits, when such an amendment operates only prospectively and affects no compensation already earned?

2. Whether a legislative judgment about reform of a complex public employee pension system, challenged on the basis of the Contract Clause, is entitled to reasonable deference from the courts, as opposed to the strict scrutiny applied to a purely financial obligation related to a state's entry into the market place?

3. Whether a state or local government has the burden of showing a present "emergency or severe fiscal crisis" in order to justify an amendment to a public employee pension system, even though that amendment is reasonable and necessary to important public purposes?

## PARTIES

In addition to the parties listed in the caption, all persons who were active members of the police department or the fire department of the City of Los Angeles on July 1, 1982 and were hired before December 1980 have a financial interest in the outcome of this case, as do their spouses and children.



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CITY OF LOS ANGELES, *et al.*,  
*Petitioners,*

v.

UNITED FIREFIGHTERS OF LOS ANGELES CITY, *et al.*,  
*Respondents.*

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The City of Los Angeles and the Board of Pension Commissioners of the City of Los Angeles hereby petition for issuance of a writ of certiorari to review the decision of the Court of Appeal of the State of California, Second Appellate District, dated April 26, 1989, as modified on May 22, 1989.

**OPINIONS BELOW**

The order of the California Supreme Court denying review is not reported and is reprinted at Appendix ("App.") 31a. The opinion of the Court of Appeal of the State of California, Second Appellate District, Division One ("Court of Appeal") is reported as modified on denial of rehearing at 210 Cal.App.3d 1095, 259 Cal.Rptr. 65, and is reprinted at App. 1a. The order of the California Superior Court ("the trial court") holding that the pension benefits at issue here are vested contractual rights is unreported and appears at App. 72a. The decision of the trial court rendered at the conclusion of trial is not reported and appears at App. 32a.

**JURISDICTION**

The Court of Appeal entered its opinion on April 26, 1989, and modified its opinion upon denial of rehearing on May 22, 1989. The California Supreme Court entered its order denying review on July 19, 1989. On October 3, 1989, Justice

O'Connor extended until November 16, 1989, petitioners' time for filing a petition for a writ of certiorari. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND CITY CHARTER PROVISIONS INVOLVED

U.S. Const. art. I, § 10, cl. 1:

"No State shall pass any ... Law impairing the  
Obligation of Contracts...."

Los Angeles City Charter Art. 17, 18:

The text of these articles appears at App. 81a and 130a.

## STATEMENT OF THE CASE

The judgment below declared unconstitutional certain 1982 amendments to Articles 17 and 18 of the Los Angeles City Charter. Charter §§ 184.96(A), 190.143(A) (App. 115a-116a, 192a-193a). Each amendment modified the cost of living allowance ("COLA") that will be paid on retirement to police officers and firefighters. The amendments affected only current employees; they made no change whatever in benefits paid or to be paid to those who retired prior to July 1, 1982. Reporter's Transcript on Appeal ("R.T.") 257:7-8.

The amendments affected the City's Article 17 and Article 18 pension systems. These systems provide pensions to police officers and firefighters hired before December 1980. The pension to be paid is calculated on the basis of years of service: for each year of service up to 20 years a member earns a pension benefit equal to 2% of his or her final salary, and earns at a rate of 3% per year thereafter. A member who retires after 20 years of service will thus receive an annual pension benefit equal to 40% of final salary, a member who retires after 25 years will receive 55% of final salary, and a member who retires after 30 years of service, 70% of final salary. R.T. 247:15-248:14.

Prior to 1966, there was no provision for adjustment of pension benefits for inflation. In that year, the voters adopted a proposal sponsored by the respondent police and fire unions that created a cost of living allowance ("COLA"), but provided that the COLA would be "capped" at 2%. R.T. 247:1-8; 248:15-23. In other words, the "basic benefit" described in the preceding paragraph, which represents the amount paid to an officer in the first year after retirement, would be increased from year to year in proportion to the rise in the Consumer Price Index ("CPI"), provided, that the maximum increase could be only 2% even if the CPI rose by more than that amount.

In 1971, the respondent unions induced the City Council to place on the ballot a measure to eliminate the "cap" from the COLA — in other words, to allow the benefit to increase annually by the full amount of the rise in the CPI. R.T. 574:16-24. This change was projected to cost the City no more than approximately \$3.75 million per year, R.T. 582:2-583:5; Clerk's Transcript on Appeal ("C.T.") 2269, and the City Attorney advised the Council, consistent with existing law, that the provision "uncapping" the COLA could be reversed should the future financial condition of the City so require, provided benefits actually earned were protected. R.T. 972:1-23; 982:22-983:8. The voters approved the measure by the narrow margin of 50.99%. R.T. 249:22-250:1.

By 1981, it was clear that the 1971 decision to uncapped the COLA was a disastrous mistake. Instead of the \$3.75 million that had been projected, by 1982 the uncapped COLA was costing \$178 million annually, C.T. 3060, and actuarial estimates rose each year in a way that led the City's managers to conclude that the COLA's costs were not only enormous but essentially impossible to forecast. R.T. 905:22-906:4; 977:26-978:3. Faced with these realities, the Council did exactly what it had been advised in 1971 it could do if the City's condition so required. The Council placed on the ballot a measure, called Charter Amendment H, that

modified the COLA but tailored the modification carefully to apply to *unearned* benefits *only*.

The amendment divided into two parts the pension payable on retirement to a current employee. The first part represented the amount of the pension benefit that had been earned prior to July 1, 1982, the effective date of the amendment. On this portion of the pension, a full, uncapped COLA was payable. Charter Amendment H thus had no effect on *earned* benefits. The second part represented benefits that would derive from service after July 1, 1982 — in other words, benefits that as of the date of Charter Amendment H *had not yet been earned*. On this portion of the pension benefit, the COLA would be either the actual increase in the CPI or 3% per year, whichever was less. R.T. 256:27-257:23. The overall effect of the amendment was thus to reduce slightly the deferred compensation (pension benefits) that would be paid for *future* service, a reduction accomplished by imposing a 3% “cap” on the COLA applicable to pension benefits earned *after* July 1, 1982.

Both before and after Charter Amendment H, Los Angeles police and firefighters were extremely well off. In 1982 the total cost, including pension and salary, for an officer in the Los Angeles Police Department was the highest of any major city in the country. A Los Angeles police officer cost about 50% more, in salary and benefits, than a Los Angeles County deputy sheriff — even though the two do identical work (and in many places work literally across the street from each other) and even though Los Angeles County deputy sheriffs are the *second* most costly police force in the country. C.T. 2422-36; R.T. 651:8-25.

On June 8, 1982, Charter Amendment H was approved by approximately 70% of the voters, R.T. 253:23-27. Respondents filed these lawsuits a few days later.

On June 3, 1983, the Superior Court considered cross-motions for partial summary judgment filed by the parties. The court granted defendants’ motion, thereby holding that

pension benefits not yet earned by the rendering of services are not protected by the Contract Clause, U.S. Const. art. I, § 10, cl. 1, and that modifications to such unearned benefits do not raise any constitutional issue. App. 78a.

In October 1983, the California Court of Appeal decided *Pasadena Police Officers Ass'n v. City of Pasadena*, 147 Cal.App.3d 695, 195 Cal.Rptr. 339 (1983), holding that even *unearned* pension benefits were rights protected by the Contract Clause. In light of *Pasadena*, respondents moved for reconsideration of the partial summary judgment for defendants. On November 8, 1985, the Superior Court announced that it would follow the constitutional ruling of the *Pasadena* decision, and accordingly held that respondents' unearned pension benefits were rights protected by the Contract Clause. App. 72a.

Thereafter, in February 1987 the remaining issues were tried. Those issues involved whether, assuming that unearned pension benefits were rights protected by the Contract Clause, Charter Amendment H had unconstitutionally impaired those rights. On March 6, 1987, the Superior Court rendered a decision in favor of plaintiffs, on the ground that impairment could not be justified absent a showing that it was required to prevent a municipal insolvency or similar fiscal emergency. App. 32a, 65a-68a. A declaratory judgment that Charter Amendment H was unconstitutional was entered April 6, 1987. App. 69a.

On April 26, 1989, the California Court of Appeal rendered a decision affirming the trial court's judgment. App. 1a. On May 22, 1989, the Court of Appeal entered an order denying rehearing, modifying the opinion but not the judgment, and certifying its opinion, as modified, for publication. App. 28a. On July 17, 1989, the Supreme Court of California denied review. App. 31a.

## HOW THE FEDERAL QUESTIONS WERE RAISED

The federal questions were initially raised by respondents in their original complaints. The Los Angeles Police Protective League asserted in its complaint that the charter provisions at issue "are invalid and violate Article 1, Section 10, Clause 1 of the United States Constitution." The United Firefighters alleged in their complaint that the charter amendments unconstitutionally deprived them of vested contract rights.

The trial court ruled on the federal questions in its March 6, 1987 opinion. Specifically, the trial court held "[t]hat the right to earn pension benefits provided by the City Charter Amendment 2 (effective July 1, 1971), with an uncapped COLA, . . . are vested contractual rights subject to the contract clauses of the United States (U.S. Constitution Art. I, Section 10 Cl. 1) and California (California Constitution Art. I Section 9)" and that the Los Angeles City Charter amendments "are invalid and unenforceable because each of them is a law impairing the obligations of contract within the meaning of Article I Section 9 of the Constitution of the State of California and Article 1 Section 10, Clause 1 of the Constitution of the United States." App. 65a, 68a.

The court below affirmed on the ground, *inter alia*, that there was no justification for any impairment worked by Charter Amendment H because there was no showing of fiscal emergency. The court held, first, that unearned pension benefits are rights protected by the Contract Clause of the U.S. Constitution. App. 3a-8a. In addition, the court held that the trial court correctly concluded that defendants "failed to carry their burden of proving the existence of a genuine emergency or severe fiscal crisis . . ." App. 22a.

## REASONS FOR GRANTING THE PETITION

### I. THE COURT OF APPEAL'S HOLDING THAT UNEARNED PENSION BENEFITS WERE RIGHTS PROTECTED BY THE CONTRACT CLAUSE WAS CONTRARY TO LONGSTANDING PRECEDENT OF THIS COURT AND AN UNWARRANTED EXPANSION OF FEDERAL POWER OVER LOCAL GOVERNMENT.

The decision below strikes at the heart of the ability of state and local government to regulate the terms and conditions of public employment. A long and settled line of cases in this Court holds that a statutory provision for public employee compensation will not be construed as a contract: a public employer remains free to modify the statute for the future, provided only that compensation *already earned* is paid. *Dodge v. Board of Education*, 302 U.S. 74 (1937); *Mississippi ex rel. Robertson v. Miller*, 276 U.S. 174 (1928); *Pennie v. Reis*, 132 U.S. 464 (1889); *United States v. Fisher*, 109 U.S. 143 (1883); *Newton v. Commissioners*, 100 U.S. 548, 559 (1880); *Butler v. Pennsylvania*, 51 U.S. 402 (1850). Charter Amendment H did exactly what this Court's cases say the Contract Clause allows. It preserved all pension benefits already earned, but reduced somewhat the rate at which pension benefits could be earned *in the future*. Contrary to this Court's repeated teaching, the court below held that this provision was unconstitutional on the ground that pension benefits, not yet earned by the rendering of services, were rights protected by the Contract Clause, and that those rights had been impaired.<sup>1</sup> App. 3a, 13a.

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<sup>1</sup>Although there are passing references in the Court of Appeal's opinion to the contract clause contained in the California Constitution, the opinion does not clearly and expressly state that the ruling is based on that provision. Rather, it is apparent that the opinion rests primarily on federal law. Under these circumstances, there is no adequate and independent state ground for the decision that defeats the jurisdiction of this Court. *Michigan v. Long*, 463 U.S. 1032, 1037-44 (1983). More-

The “contract” relied on by the court below derives solely from the provisions of the Los Angeles City Charter for an uncapped COLA, as those provisions existed from 1971 to 1982; this case thus involves no contract in the ordinary sense of a consensual agreement between the parties. The pension provisions of the Charter are merely a small portion of the complex of statutes and ordinances that prescribe the salary, benefits, and other compensation of Los Angeles police officers and firefighters. While recognizing that public employee compensation in general may be modified for the future, the court below held that pension benefits — unlike all other forms of employee compensation — have “the status of a contractual obligation from the moment one accepts public employment,” whether or not those benefits have been earned. App. 8a. No principle supports this distinction between pension benefits and other employee compensation, nor did the court below attempt to articulate any basis for the distinction it drew. Candidly characterizing its result as an “anomaly,” it said merely that the anomaly was one “sanctioned by the California Supreme Court.” App. 8a.<sup>2</sup>

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over, even if the decision were based on the alternative ground of the state constitutional contract clause, review by this Court would still be warranted since it is apparent that the Court of Appeal’s interpretation of the scope of the state contract clause is wholly dependent upon its analysis of the scope of protection afforded by the federal clause. *Id.* at 1038 n.4; *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977). California courts treat the contract clause of the California Constitution as a “parallel proscription” to the federal contract clause. *Allen v. Board of Administration*, 34 Cal.3d 114, 119, 192 Cal.Rptr. 762, 765, 665 P.2d 534, 537 (1983).

<sup>2</sup>Although the fact is not of critical importance to the issue before this Court, the court below was wrong in its statement of what the California Supreme Court has “sanctioned.” No case from that court has ever invalidated a pension modification, like this one, that affects unearned benefits only. Of the cases on which the court below relied, *Betts v. Board of Administration*, 21 Cal.3d 859, 148 Cal.Rptr. 158 (1983), involved pension modifications made after the employee had left work and which therefore affected *only* earned benefits; while *Allen v. City of*

Whether the scope of the Contract Clause should be expanded so as to restrict local government in this way, however, is not a question for the California courts, but for this Court. As this Court has stated on numerous occasions, in a case of this nature the initial question that this Court must determine is whether there was a contract within the meaning of the Contract Clause of the Constitution. *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942) ("When this Court is asked to invalidate a state statute upon the ground that it impairs the obligation of a contract, the existence of the contract and the nature and extent of its obligation become federal questions . . . [and] finality cannot be accorded to the views of a state court."); see also *Municipal Investors Ass'n v. Birmingham*, 316 U.S. 153, 157 (1942); *United States Mortgage Co. v. Matthews*, 293 U.S. 232, 236 (1934); *Appleby v. City of New York*, 271 U.S. 364, 379 (1926). Nearly one hundred years ago, this Court explained the necessity for and importance of this independent determination:

"[I]s this court required to accept the principles announced by the state court as to the extent to which the contract clause of the Federal Constitution restricts

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Long Beach, 45 Cal.2d 128, 287 P.2d 765 (1955) and *Abbott v. City of Los Angeles*, 50 Cal.2d 438, 326 P.2d 484 (1958), involved efforts to modify benefits earned by many years of service. *Carman v. Alvord*, 31 Cal.3d 318, 182 Cal.Rptr. 506 (1982), did not involve pension legislation at all, but dealt with the construction of Proposition 13, while the holding of *Miller v. State of California*, 18 Cal.3d 808, 135 Cal.Rptr. 386 (1977), on which the Court of Appeal placed principal reliance, tends rather to support the City's position, since it upholds a change in the retirement age despite the adverse effect of that change on the right to accrue pension benefits. The only California appellate case that *holds* in the same way as the court below is another Court of Appeal decision, *Pasadena Police Officers Ass'n v. City of Pasadena*, 147 Cal.App.3d 695, 195 Cal.Rptr. 339 (1983), with the reasoning of which the court below ironically did not agree. App. 7a. Both *Pasadena* and the decision below well illustrate the dangers of relying on unanalyzed snippets of cases, rather than their facts and holdings.

the powers of the state legislatures? Clearly not . . . . [T]he issue presented makes it necessary to inquire whether that which the defendant asserts to be a contract was a contract of the class to which the Constitution of the United States referred. This Court must determine — indeed, it cannot consistently with its duty refuse to determine — upon its own responsibility, in each case as it arises, whether that which a party seeks to have protected under the contract clause of the Constitution of the United States is a contract the obligation of which is protected by that instrument against hostile state legislation.” *Douglas v. Kentucky*, 168 U.S. 488, 500-01 (1897).

Whether unearned pension benefits constitute a contractual obligation within the meaning of the Contract Clause was the central issue for resolution in this case. The result reached by the court below is contrary to longstanding precedent of this Court, and directly in conflict with that reached by the Court of Appeals for the Fourth Circuit in a factually identical case that involved the cost of living provisions of the Maryland teachers retirement system. *Maryland State Teachers Ass’n v. Hughes*, 594 F.Supp. 1353 (D.Md. 1984), *aff’d*, No. 84-2213 (4th Cir. Dec. 5, 1985), App. 211a. The issue presented is important because it affects the ability of local governments to enact needed pension reforms at a time when the problems of pension systems, public and private, are of increasing concern. Failure to allow reform will impose crippling costs on local governments throughout the United States, and interfere with their ability to deliver vitally needed public services. And when a state court reaches out, as the court below did, to strike down a reform approved by 70% of the voters on the basis of a constitutional interpretation that has no support in this Court’s precedents, fundamental considerations of federalism and respect for popular sovereignty make it appropriate for this Court to ensure that the state

court cannot wrap its result in the federal Constitution and thus insulate itself from any effective review.

**A. This Court Has Ruled That a Public Employer May Reduce the Statutory Compensation to be Paid for Future Services Without Violating the Contract Clause. Charter Amendment H Is Consistent With That Principle.**

In *Butler v. Pennsylvania*, 51 U.S. 402 (1850), Pennsylvania Canal Commissioners challenged a statute, passed after they had been appointed to their positions, that reduced their compensation effective from the date of the statute's enactment. Their claim was that the reduction in pay violated the Contract Clause. This Court upheld the legislation, holding that "the appointment to and the tenure of an office created for the public use, *and the regulation of the salary affixed to such an office*, do not fall within the meaning of the [Contract Clause] of the Constitution." 51 U.S. at 417 (emphasis added). The Court carefully distinguished the measure before it, which plainly did not attempt to take away from the commissioners any salary they had already earned, from an effort to reduce compensation for services already performed:

"The promised compensation for services actually performed and accepted, during the continuance of the particular agency, may undoubtedly be claimed, both upon principles of compact and of equity; but to insist beyond this on the perpetuation of a public policy either useless or detrimental, and upon a reward for acts neither desired nor performed, would appear to be reconcilable with neither common justice nor common sense. The establishment of such a principle would arrest necessarily every thing like progress or improvement in government; or if changes should be ventured upon, the government would have to become one great pension establishment on which to quarter a host of sinecures." 51 U.S. at 416.

See also *Dodge v. Board of Education*, 302 U.S. at 78-79 (“[A]n act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature.”); *United States v. Fisher*, 109 U.S. 143 (1883) (statutory salary in effect when justice took office was not a contract that salary would not be reduced in the future); *Newton v. Commissioners*, 100 U.S. 548, 559 (1880) (the state’s police power permits it to “increase or diminish the salary or change the mode of compensation”).

The freedom to reduce compensation to be paid for future services does not, of course, entitle a public body to refuse to pay an employee for past services at the statutory rate in effect when the services were performed. In *Mississippi ex rel. Robertson v. Miller*, 276 U.S. 174 (1928), this Court considered a challenge to a Mississippi statute that had the effect of reducing the compensation to be paid to a former state revenue agent for services that had already been provided. The Court ruled that the state could not do so without impairing the obligation of the implied contract that arose in favor of the agent after he had performed his duties and become entitled to the specified compensation. *Id.* at 179. In so ruling, the Court reacknowledged the principle laid down in *Butler* that “the contract clause does not limit the power of a state during the terms of its officers to pass and give effect to laws prescribing for the future the duties to be performed by, or the salaries or other compensation to be paid to, them.” *Id.* at 178-79 (emphasis added). See also *Fisk v. Jefferson Police Jury*, 116 U.S. 131, 133-34 (1885) (“[T]here is no contract which forbids the legislature or other proper authority to change the rate of compensation or salary for services after the change is made....”); *Arceneaux v. Treen*, 671 F.2d 128, 135 (5th Cir. 1982) (“There is nothing in the meager case law interpreting the contract clause to suggest that it can be invoked to invalidate statutes, regulations, or policies that change conditions or terms of employment for public employees”).

These cases firmly establish dual propositions that are controlling here: payment of compensation provided by statute that has been earned by rendering services is a right protected by the Contract Clause; the mere expectancy of continuing to earn compensation at the same level previously provided by statute is not. Those principles apply in this case since it was undisputed — and was expressly recognized by the court below — that pension benefits are a form of deferred compensation. *See App. 8a.* Under the decisions of this Court discussed above, it is clear that the City's provision of a full COLA was not tantamount to an undertaking that the COLA would never be modified or reduced in the future. Rather, the only contractual obligation that can be implied is that the City would pay the full value of pension benefits actually earned by service. Because it fully preserves the value of all COLA benefits earned by service before its effective date, Charter Amendment H infringes no contractual rights within the meaning of the Contract Clause.

**B. The Law of California in 1971 Permitted a Public Employer to Reduce the Amount of Compensation to be Paid for Future Services. Any Contract That Arose in 1971 Obligating the City to Provide a Full COLA Necessarily Incorporated That Principle.**

In *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), this Court made plain that there can be no violation of the Contract Clause where a contractual modification is consistent with the law at the time of contracting:

"The obligations of a contract long have been regarded as including not only the express terms but also the contemporaneous state law pertaining to interpretation and enforcement. 'This Court has said that "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms."' This principle

presumes that contracting parties adopt the terms of their bargain in reliance on the law in effect at the time the agreement is reached." 431 U.S. at 19-20 n.17 (citations omitted).

The relevant time in this case is 1971, the date of enactment of the COLA provisions that were modified by Charter Amendment H. But it is clear that in those days even the California courts, consistently with this Court's teaching, held that unearned pension benefits were not protected by the Contract Clause.

In *Kern v. City of Long Beach*, 29 Cal.2d 848, 179 P.2d 799 (1947), the California Supreme Court recognized that pension benefits are a form of deferred compensation analogous to salary and are protected from reduction *to the same extent that salary is protected*:

"[A]n employee does not earn the right to a full pension until he has completed the prescribed period of service, but he has actually earned some pension rights as soon as he has performed substantial services for his employer. He is not fully compensated upon receiving his salary payments because, in addition, he has then earned certain pension benefits, the payment of which is to be made at a future date. . . . *[T]he employing governmental body may not deny or impair the contingent liability any more than it can refuse to make the salary payments which are immediately due.* Clearly, it cannot do so after all the contingencies have happened, and in our opinion it cannot do so at any time after a contractual duty to make salary payments has arisen, since a part of the compensation which the employee has at that time earned consists of his pension rights." 29 Cal.2d at 855, 179 P.2d at 803 (citations omitted; emphasis added).

On the other hand, California law has long recognized that a public employer is free to reduce the salary it will pay for future services. *Townsend v. County of Los Angeles*, 49

Cal.App.3d 263, 268, 122 Cal.Rptr. 500, 503 (1975); *Gilbaugh v. Bautzer*, 3 Cal.App.3d 793, 796, 83 Cal.Rptr. 806, 807 (1970); *Brown v. Hanford Elementary School Board*, 263 Cal.App.2d 170, 174-75, 69 Cal.Rptr. 154, 157 (1968); *Kac-sur v. Board of Trustees*, 18 Cal.2d 586, 591, 116 P.2d 593, 596 (1941); *Butterworth v. Boyd*, 12 Cal.2d 140, 150, 82 P.2d 434, 439 (1938).

Consistent with these principles, a series of decisions rendered in the years before 1971 held that modification of unearned pension benefits was permissible. See *Houghton v. City of Long Beach*, 164 Cal.App.2d 298, 330 P.2d 918 (1958); *Allstot v. City of Long Beach*, 104 Cal.App.2d 441, 231 P.2d 498 (1951); [*Albion*] *Allen v. City of Long Beach*, 101 Cal.App.2d 15, 224 P.2d 792 (1950); *Palaske v. City of Long Beach*, 93 Cal.App.2d 120, 208 P.2d 764 (1949).

At issue in those cases was the validity of section 187.1 of the Charter of Long Beach, adopted in 1945. Prior to its adoption, Long Beach provided a pension equal to one half of the final salary of police and fire employees with twenty years' service. Employees who worked more than twenty years had a right to increase their pension benefits, on a graduated scale, from one half of final salary up to a total of two-thirds of final salary. Section 187.1 cut off the worker's right to earn additional pension benefits by further service: an employee with twenty-one years of service on the effective date of section 187.1 received a pension computed on the basis of twenty-one years of service, no matter how many years he continued to work. No employee became entitled, as had been the case prior to the amendment, to a pension equal to two-thirds of his final salary. The new provision thus protected benefits earned as of the effective date of the amendment, but denied any benefits for services rendered thereafter.

Employees repeatedly challenged section 187.1 in an effort to obtain the higher pension to which they would have

been entitled prior to the amendment. The provision was upheld since it protected earned benefits:

“[I]t was within the power of the city to modify its pension plan to provide that on and after the effective date of the amendment an employee who was entitled to retire might do so or not, as he saw fit, but that if he chose to continue as an employee he could not thereby earn any additional pension above that to which he was entitled on the effective date of the amendment . . . . [An employee’s] contractual right to . . . a pension has not been impaired by legislation which, operating prospectively, merely withdraws his right or option to earn a bonus by continuing in employment after he has become eligible for retirement.” *Palaske v. City of Long Beach*, 93 Cal.App.2d at 132-33, 208 P.2d at 771.

*Accord*, *Houghton v. City of Long Beach*, 164 Cal.App.2d at 308, 330 P.2d at 924; *Allstot v. City of Long Beach*, 104 Cal.App.2d at 443, 231 P.2d at 500; *[Albion] Allen v. City of Long Beach*, 101 Cal.App.2d at 20-21, 224 P.2d at 795.

The clear import of these decisions is that a public employer is free to reduce the amount of pension benefits it will pay for future services so long as the value of all pension benefits earned by service prior to the effective date of the change is fully preserved. Those cases stated the law in 1971 when the City first offered an uncapped COLA, and the principle they establish was thus incorporated into any contract that arose between the City and members of the Article 17 and Article 18 pension systems. *See United States Trust Co. v. New Jersey*, 431 U.S. at 19-20 n.17.<sup>3</sup>

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<sup>3</sup>As its sole response to the contention that in 1971 — when the uncapped COLA was enacted — even California cases did not treat unearned pension benefits as protected by the Contract Clause, the court below stated that “applicable law” in 1971 was embodied in *Miller v. State of California*, 18 Cal.3d 808, 135 Cal.Rptr. 386, 557 P.2d 970, and *Betts v. Board of Administration*, 21 Cal.3d 859, 148 Cal.Rptr. 158, 582 P.2d 614. The court below failed to point out that *Miller* was decided

**C. This Court Should Grant Review in Order to Correct the Unwarranted and Unwise Restriction on Pension Reform Imposed by the Ruling Below.**

For the reasons discussed, the Court of Appeal's ruling that the plaintiffs in this case had a contractual right to unearned pension benefits within the meaning of the Contract Clause cannot be reconciled with this Court's rulings. Compelling reasons of policy exist for the Court to intervene in this case in order to avert the damage that will be done if the ruling stands.

Pension systems nationwide are in trouble, both public and private. Any pension system that is not fully funded is a transfer of wealth from those who are working to those who are retired; society's ability to pay for such systems depends in the end on whether the working population can afford to support those whose pension it pays. This will become harder and harder. The population 65 and older is expected to increase from about 11% of the population in 1979 to about 22% in 2029 — which means that the ratio of non-retirees to retirees will decline from 9 to 1 to about 3.5 to 1. PRESIDENT'S COMMISSION ON PENSION POLICY, WORKING PAPER: DEMOGRAPHIC SHIFTS AND PROJECTIONS: IMPLICATIONS FOR PENSION SYSTEMS 2-4 (Nov. 1979). In the case of state and local pensions, the relevant ratios will be even worse. State and local government employment nearly doubled from 1960-75, but has grown much less rapidly since. In 1980 there were 9.1 million active members of state and local pension plans, and 2.3 million beneficiaries, for a ratio of beneficiaries to active members of 26%. By 2024, there will be 11.4 million active members — a 24% increase, but there will be 4.5 million retired members — a 94% increase. The dependency ratio (or the ratio of beneficiaries to active members) will thus increase by about 50%. For police and fire plans, the dependency ratio will increase

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in 1977, and *Betts* in 1978 — facts that obviously make a shambles of the court's reasoning as to the law in 1971. App. 11a.

from 42% in 1980 to 67% in 2024; for every three active police officers, there will be two retired ones. URBAN INSTITUTE, *THE FUTURE OF STATE AND LOCAL PENSIONS* 18-4, 18-6, Tables 18-1, 18-2 (April 1981).

Difficulties are especially severe when a pension system involves an uncapped COLA, and Los Angeles in 1982 was only one of many local governments in that period that found pension reform necessary. Other local governments with cost of living adjustments in their pension plans found that they simply could not afford them, and began to cut back or modify them — Detroit in 1968, San Francisco and Washington State in 1976, Minneapolis and St. Paul in 1980. R. FOGELSON, *PENSIONS: THE HIDDEN COSTS OF PUBLIC SAFETY* 176 (1984). The Urban Institute reported in 1981 that only two large state or local pension plans then still had an uncapped COLA indexed to the CPI: one was the Los Angeles system involved in this case, the other the Maryland teachers system, where the COLA was capped at 3% by a reform identical to Charter Amendment H. URBAN INSTITUTE, *THE FUTURE OF STATE AND LOCAL PENSIONS* 2-8, Table 2-4 (1981); *Maryland State Teachers Ass'n v. Hughes*, 594 F.Supp. 1353 (D. Md. 1984).

Los Angeles' situation in 1982 shows the type of difficulties to be expected if reasonable reform is not allowed. By 1982, galloping inflation had forced the pension systems' actuaries to revise their assumptions upward and upward, increasing both the projected liabilities of the system and the level of the City's contribution. C.T. 1814-18, 2766. The level of contributions demanded by the pension board's actuary was rapidly exceeding the City's ability to pay. By 1982, the recommended contribution reached \$227 million per year — a figure that was an increase of \$56 million, or 30%, from the year before. C.T. 2766. This figure represented 16.5% of the City's *total* budget, 73% of all fire and police payroll, and 92% of *all* the City's property tax revenues. C.T. 2766, 3015, 3024.

City officials were not hasty in reaching the judgment that reform of the pension systems was required. On the contrary, the City acted in response to years of studies and recommendations, from insiders and respected outsiders alike. All found that reform was essential. In particular:

— As early as 1975, the Mayor's Ad Hoc Committee on City Finances reported that Los Angeles was a mature or "aging city" with a "serious financial problem," and that among the "danger signs" were the "mounting costs of City salaries and pensions." C.T. 2476-78, 2498-2507.

— Following passage of Proposition 13 in 1978, the Ad Hoc Committee on City Finances resumed its sessions. It reported that "[a]ction must be taken to reduce the continued and long-range growth in pension costs." C.T. 2602, 2623.

— In 1979, the respected Town Hall of California issued its report on public pensions. It reported that the Los Angeles Fire and Police Pension Systems "threaten[ed] the future ability of the City to provide services for the citizenry." C.T. 2299.

— The City Council's Finance and Revenue Committee reported to the Council in 1979 that pension costs were having a "disastrous impact . . . on the City's ability to provide services." C.T. 2324.

— The State Controller's report for 1979 showed that the Los Angeles police and fire pension system was the most expensive and least well funded system in California, and among the worst in the nation. C.T. 3003-07; R.T. 619:17-20.

— The Ad Hoc Committee on Pension Reform, appointed by the Council in 1979, held extensive hearings and received reports from actuaries and others. It concluded that reform was essential. C.T. 2437-61, 2637-79, 2932-44.

— In 1980, the State Controller reported that the Los Angeles police and fire pension system had “little margin for adverse experience,” and that the funding ratio was “dangerously low.” C.T. 2718, 2720.

— In 1980, the City Administrative Officer reported to the Council that as a result of pension costs “the long term financial stability of the City is clearly at risk.” C.T. 2330.

— In 1981, the Council appointed a Blue Ribbon Task Force on Pension Reform, composed of Southern California’s leading experts on pension matters. The Council noted that “[t]he cost of the Fire and Police Pension System is having a critical impact on the financial integrity of the City.” C.T. 2341. The Blue Ribbon Task Force held extensive hearings and received numerous studies and reports. C.T. 2737-49. It concluded that reform was overdue and recommended what became Charter Amendment H. C.T. 2351-2436.

What is noteworthy about these studies is that they were *unanimous* in recommending reform, and unanimous in supporting Charter Amendment H. In the late 1970’s and early 1980’s *no one* thought that Los Angeles could afford to leave the pension system as it was. Charter Amendment H was a reasonable and responsible measure that was designed — and succeeded — in avoiding the kind of pension system meltdown that brought New York to the brink of bankruptcy in the mid-70’s and which has afflicted and will afflict many other local governments throughout the country.

The court below struck down Charter Amendment H on the basis of a theory of contractual rights that is contrary to this Court’s precedents and contrary to the freedom that this Court has always given local governments to regulate the compensation of their employees. Sensible state courts and commentators alike recognize that local government needs freedom to deal with its pension problems, and that

mechanical application of contract theory in the pension area cannot be justified. *Pineman v. Oechslin*, 195 Conn. 405, 488 A.2d 803 (1985); *Spina v. Consolidated Police & Firemen's Pension Fund Comm'n*, 41 N.J. 391, 197 A.2d 169 (1964); *In re Enrolled Senate Bill 1269*, 389 Mich. 659, 209 N.W.2d 200 (1973); *Public Employee Pensions in Times of Financial Distress*, 90 HARV. L. REV. 992, 1001-02 (1977). This Court needs to review the decision below to ensure that when the situation that struck Los Angeles in 1982 strikes other cities in the future, the mistaken interpretation that the court below put on the federal Constitution will not disable local governments from solving the problems they face.

## II. THE COURT OF APPEAL'S RULING THAT CHARTER AMENDMENT H UNCONSTITUTIONALLY IMPAIRED THE CITY'S OBLIGATION TO PROVIDE AN UNCAPPED COLA CONFLICTS WITH RULINGS OF THIS COURT AND WITH A DECISION FROM THE FOURTH CIRCUIT UPHOLDING IDENTICAL PENSION REFORM LEGISLATION ON IDENTICAL FACTS.

The court below held that Charter Amendment H was invalid under the Contract Clause because it impermissibly impaired the obligation of the City to provide an uncapped COLA. Two related aspects of this ruling warrant review by this Court. First, like the trial court, the Court of Appeal declined to give appropriate deference to the legislative determination of need for the pension reform accomplished by Charter Amendment H. Second, even though it paid lip service to the principle that a law impairing a contractual obligation will be upheld if reasonable and necessary to an important public purpose, the court in fact required that the City demonstrate that an actual fiscal emergency necessitated Charter Amendment H. These rulings are inconsistent with this Court's decisions and in direct conflict with the decision in *Maryland State Teachers Ass'n v. Hughes*, *supra*,

where the Fourth Circuit upheld legislation identical to Charter Amendment H.

**A. The Court of Appeal Erroneously Declined to Give Any Deference to the Legislative Determination That Charter Amendment H Was Reasonable and Necessary to Achieve Important Public Purposes.**

In *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), this Court invalidated the attempted repeal of a statutory covenant enacted to provide security for the holders of bonds issued by the New York Port Authority. In the course of that opinion, the Court explained the appropriate standard of review when a state law was challenged as impairing the obligation of a public contract:

“The Contract Clause is not an absolute bar to subsequent modification of a State’s own financial obligations. As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.” *United States Trust Co. v. New Jersey*, 431 U.S. at 25-26.

In this case, the trial court found that Charter Amendment H was enacted to accomplish several important public purposes. App. 61a-62a, 66a. These included the following: (1) preservation of the integrity and soundness of the Article 17 and Article 18 pension systems, to insure that benefits provided by the systems would be funded and paid; (2) elimination of the frequent and unpredictable changes in recommended pension contributions caused by the uncapped COLA in order to improve the City’s ability to achieve long-term budgeting; (3) avoidance of cuts in vital services that in the judgment of City officials could not be made without endangering public health, safety and welfare; (4) preservation of the morale of all City employees; (5) protection of the long-range financial health of the City by modification of an obligation that the City ultimately could not sustain; and (6) maintenance of popular support for pen-

sion systems in general. As discussed in Part I(C), *supra*, the record amply demonstrated the importance of these purposes and the necessity for Charter Amendment H.

At trial, moreover, all responsible City officials — including Mayor Bradley and the present and former chairs of the Finance Committee — testified that in their judgment Charter Amendment H was reasonable and necessary to achieve those purposes. Their judgment was backed up by the numerous studies and reports that were admitted. And there was no contrary evidence. Plaintiffs offered no actuary, no economist, no other expert who said Charter Amendment H was unreasonable or unnecessary. *All* the experts who had an opinion — the City Administrative Officer, the Mayor, the present and past Chairmen of the Finance Committee, the actuaries, the economists, the outside commissions whose reports were admitted — testified that Charter Amendment H was reasonable and necessary. No witnesses, expert or non-expert, testified that it was not.

It follows that if *any* deference is given to the views of the responsible City officials, or of the voters who enacted Charter Amendment H, the measure must be upheld. The court below, however, took the view that no deference was owed, on the ground that Charter Amendment H was a modification of the City's own "contract", and that such modifications must be subjected to "careful scrutiny." App. 23a. This refusal to give deference to the legislative judgment was error.

The court below believed that strict scrutiny, rather than deference, was required because of language in *United States Trust* to the effect that "complete" deference is inappropriate when a state's "financial obligation" is involved. App. 16a; *see* 431 U.S. at 25-26. But the complex relationship of a city to its employees who are members of its pension systems cannot be equated with the "financial obligation" involved in *United States Trust*. Indeed, this Court's language in *United States Trust* makes plain that the require-

ment of strict scrutiny applies only when a state enters the commercial marketplace:

"The truth is, States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons. Hence, instead of there being in the undertaking of a State or city to pay, a reservation of a sovereign right to withhold payment, the contract should be regarded as an assurance that such a right will not be exercised. A promise to pay, with a reserved right to deny or change the effect of the promise, is an absurdity." *United States Trust Co. v. New Jersey*, 431 U.S. at 25 n.23 (quoting *Murray v. Charleston*, 96 U.S. 432, 445 (1878)).

Charter Amendment H involved no entry into the marketplace; instead, in setting the terms and conditions of public employment, Los Angeles was acting unquestionably as a sovereign. This Court has long recognized that a state's regulation of its own employees is an area that is critical to its functioning as a sovereign entity:

"[T]he appointment to and the tenure of an office created for the public use, and the regulation of the salary affixed to such an office, do not fall within the meaning of the section of the Constitution relied on by the plaintiffs in error; do not come within the import of the term *contracts*, or, in other words, the vested, private personal rights thereby intended to be protected. They are functions appropriate to that class of powers and obligations by which governments are enabled, and are called upon, to foster and promote the general good; functions, therefore, which governments cannot be presumed to have surrendered, if indeed they can under any circumstances be justified in surrendering them." *Butler v. Pennsylvania*, 51 U.S. at 417.

The correct standard of review of public employee relationships under the Contract Clause is stated in *Amalgamated Transit Union Local 589 v. Massachusetts*, 666 F.2d 618 (1st Cir. 1981), where the First Circuit reviewed two successive enactments that had drastically altered and restricted the scope of the statutory procedure for modifying the collective bargaining agreement between the plaintiff union and the Massachusetts Bay Transit Authority ("MBTA"), a state agency:

"The Union argues that Chapters 405 and 581 are not 'reasonable and necessary' because there are other methods available — fare increases for example, that will resolve the MBTA's financial problems. The issue that the Union's claim puts before us is the extent to which we are to defer to the state legislature's judgment on these matters.

"If we judge the legislature's actions 'in the light of the facts made known or generally assumed,' those actions are supportable. The legislature clearly felt that Chapters 405 and 581 represented a necessary response to the problems before it. We cannot disagree. . . . The complex controversies revealed by the conflicting affidavits filed in the district court themselves suggest that there is no 'obvious' alternative to the legislature's approach. Thus, even without engaging in the normal presumptions favoring state legislation, we would conclude that a *legislative judgment that these statutes are both reasonable and necessary is itself a reasonable judgment.*

"We do not believe that *United States Trust* requires the federal courts to go further to reexamine *de novo* all the factors underlying the legislation and to make a totally independent determination about whether a fare increase or some other alternative would have constituted a 'better' statutory solution. It is true that language in *United States Trust* suggests moderately close court scrutiny of legislation that conflicts with prior

*public* contracts. To be specific, the Court stated that as to *private* contracts, 'in reviewing economic and social regulation . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. . . .' But, as to *public* contracts, 'complete deference to a legislative assessment of reasonableness and necessity is not appropriate. . . .' This language itself, however, refers only to the need to avoid 'complete' deference, and it is to be contrasted with the dissent's claim that in Contract Clause cases there should be 'unusual' deference to the lawmaking authority of state governments. The very existence, and nature, of the complex factual controversies revealed in the record before us here support the legislature's judgment even without 'complete' deference." 666 F.2d at 641-42 (citations omitted; emphasis added).

Similarly, in *Maryland State Teachers Ass'n v. Hughes*, 594 F.Supp. 1353 (D.Md. 1984), *aff'd*, No. 84-2213 (4th Cir. Dec. 5, 1985), App. 211a, the court drew a clear distinction between the municipal bond contract involved in *United States Trust* and the retirement and pension systems that were the subject of the litigation before it. *Maryland Teachers* is particularly instructive, since in that case the District Court and the Fourth Circuit upheld against a Contract Clause challenge a Maryland law imposing a 3% cap on the COLA on unearned benefits paid by the Maryland teachers retirement plan — a reform that is *identical* to Charter Amendment H. The court said:

"In the area of pension reform, unlike the area of municipal bonds, the issues are multifaceted. Projections as to the effect of a particular piece of legislation, like the 1979 Act, are based on actuarial assumptions which may or may not turn out to be accurate. . . .

"The contract herein concerns, not a clear financial obligation, but a complex retirement/pension system. It addresses components of that system, the cost of living

adjustment and the contribution a member must make to the retirement system.

"Therefore, while the court must look carefully at the necessity for the modification to assure itself that the State's self interest is not masking the facts, once the facts are brought to light the court should not act as a super legislature and attempt to second guess which legislative act would have better solved the perceived problem. The legislature has the responsibility and the discretion to act on the facts and information at its disposal." *Maryland State Teachers Ass'n v. Hughes*, 594 F.Supp. at 1371.

The court below failed to follow these principles. Mistakenly believing strict scrutiny was required, it accorded no deference to the substantial record of the City Council's study of the need for Charter Amendment H, or to the legislative conclusion that enactment of the measure was necessary to attain public purposes that the court conceded were important. Review of the decision below is important to resolve the conflict between the California courts and the lower federal courts concerning the appropriate level of deference to the legislative judgment in Contract Clause cases.

**B. Legislation Impairing a Public Entity's Obligation Will Be Upheld if it Is Reasonable and Necessary to an Important Public Purpose. The Court of Appeal Impermissibly Restricted That Standard by Requiring the City to Demonstrate That Charter Amendment H Was Necessitated by a Fiscal Emergency.**

As discussed, *United States Trust Co. v. New Jersey* holds that impairment of a public contractual obligation is constitutional "if it is reasonable and necessary to serve an important public purpose." 431 U.S. at 25. In *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S.

400 (1983), the Court reaffirmed that rule, couching the standard in slightly different terms:

“If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem.” 459 U.S. at 411-12.

Although the court below purported to follow these standards, examination of its opinion indicates that in fact it held the City to a much more restrictive standard, invalidating Charter Amendment H because the City did not carry its “burden of proving the existence of a genuine emergency or severe fiscal crisis of a sort which reasonably and necessarily would be ameliorated by the enactment of charter amendment H.” App. 22a. In fact, under this Court’s cases, the City had no such burden.

The “emergency or fiscal crisis” standard applied by the court below was derived, of course, from this Court’s decision in *Home Building & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 444 (1934). It is plain, however, that this aspect of *Blaisdell* is no longer the law. As the Court said in *Energy Reserves*, following the passage quoted above:

“Furthermore, since *Blaisdell*, the Court has indicated that the *public purpose need not be addressed to an emergency or temporary situation*. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.” 459 U.S. at 412 (citations omitted; emphasis added).

As discussed, Charter Amendment H was enacted to fulfill purposes that both the trial court and the Court of Appeal agreed were important. The broad purpose of Charter Amendment H was to accomplish needed reform *before* the City and the pension systems were plunged into a

financial crisis. The court below made impossible prudent long term management of a troubled pension system by holding that an impairment may be justified *only* if an actual emergency exists. In adopting that standard, the court below departed from the principles stated by this Court in *United States Trust* and *Energy Reserves*. And it compounded its error by also failing to accord proper deference to the City's determination of the need for the legislation.

The result reached by the court below makes little or no practical sense. It is astonishingly shortsighted to insist, as did the court below, that there must be an actual fiscal crisis or emergency in order to justify a pension reform measure designed to head off just such a crisis in the future. Why on earth should the Constitution be held to require that a local government wait for a cyclone before digging a storm cellar?

Once again, the *Maryland Teachers* case sets forth the correct interpretation of this Court's decisions and correctly identifies the proper standard of review. Discussing evidence that the three percent cap imposed on the COLA would help ensure the financial soundness of the retirement system, the court concluded that "[t]here can be no rational argument that the 1984 Act was not prompted by an important and legitimate public purpose. . . ." 594 F. Supp. at 1368. The court noted that "[a] pension system need not be actuarially unsound before a legislature may move to change the system and the benefits it provides its members." *Id.* Since Maryland possessed unlimited taxing power, no contention was or could have been made in that case that the state had exhausted its ability to raise revenues to pay for pension benefits: Maryland faced no immediate "emergency or severe fiscal crisis" in the sense of the court below. Yet that factor was not even discussed. Petitioners submit that the approach followed by the *Maryland* court is consistent with the rulings of this Court, and that the court below erred in requiring the City to assume the burden of demonstrating an "emergency or grave fiscal crisis."

**CONCLUSION**

For the reasons stated, this Court should issue a writ of certiorari to the California Court of Appeal, and on the merits should reverse the judgment below.

Dated: November 14, 1989

JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant  
City Attorney  
1700 City Hall East  
Los Angeles, CA 90012

Respectfully submitted,  
JOHN F. DAUM\*  
KAREN R. GROWDON  
SHARONA HOFFMAN  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, CA 90071  
(213)669-6000  
*Counsel for Petitioners*

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\* *Counsel of Record*



(2) 89-816

No. 89-

Supreme Court, U.S.

FILED

NOV 16 1989

JOSEPH E. SPANIOLO, JR.  
CLERK

In The  
Supreme Court of the United States

OCTOBER TERM, 1989

CITY OF LOS ANGELES;  
BOARD OF PENSION COMMISSIONERS  
OF THE CITY OF LOS ANGELES,  
*Petitioners,*

v.

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
LOCAL 112, IAFF, AFL-CIO;  
LOS ANGELES POLICE PROTECTIVE LEAGUE;  
RONALD DEAN GRAY; DAVID BACA, JR.;  
GREGORY PAUL DUST; BILL G. MCDANIEL;  
and FRED A. TREDY,  
*Respondents.*

APPENDIX TO PETITION FOR A WRIT OF  
CERTIORARI  
TO THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant  
City Attorney  
1700 City Hall East  
Los Angeles, CA 90012

JOHN F. DAUM\*  
KAREN R. GROWDON  
SHARONA HOFFMAN  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 669-6000  
*Counsel for Petitioners*

\* Counsel of Record

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## **APPENDIX A**

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[No. B027960. Second Dist., Div. One. Apr. 26, 1989.]

[As modified May 22, 1989.]

UNITED FIREFIGHTERS OF LOS ANGELES CITY  
et al.,

Plaintiffs and Respondents, v.

CITY OF LOS ANGELES et al., Defendants and  
Appellants.

[Headnotes and appearances of counsel deleted]

**OPINION**

**SPENCER, P. J.—**

**INTRODUCTION**

Defendants City of Los Angeles and Board of Pension Commissioners appeal from a judgment entered in favor of plaintiffs United Firefighters of Los Angeles City, Los Angeles Police Protective League and individual members thereof.

**STATEMENT OF FACTS<sup>1</sup>**

Prior to 1966, the police and firefighter pension systems made no provision for the adjustment of benefits to reflect inflation. In that year, voters adopted a charter amendment which provided for such adjustments, based on the Consumer Price Index, but imposed a yearly cap of 2 percent on the adjustments. In 1971, voters approved another charter amendment which removed the cap on

---

<sup>1</sup>As they are necessary to the discussion of the issues raised, more detailed facts will appear in the body of the opinion.

cost of living adjustments, permitting them instead to fully reflect the rate of inflation each year.

In June 1982, defendants placed charter amendment H on the ballot. It was passed by the voters and thenceforward became part of the city charter. The amendment placed a 3 percent cap on police and firefighter pension benefit cost of living adjustments based on the Consumer Price Index. As to presently employed members of the pension system, the amendment applied only prospectively to future years of service credited toward retirement. Each of the plaintiffs in the instant action accepted employment as a police officer or firefighter before or after the passage of the 1971 charter amendment, but in every instance before December 1980.<sup>2</sup>

## CONTENTIONS

### I

Defendants contend the trial court erred in viewing the change effected by charter amendment H as an impairment of the vested contractual pension rights of plaintiffs.

### II

Defendants further contend the trial court applied the wrong legal standard in determining whether charter amendment H impermissibly violated the contract clause.

---

<sup>2</sup>Employees hired after December 1980 are members of a separate pension system embodied in article XXXV of the city charter. They are not affected by the instant litigation.

## DISCUSSION

## I

Defendants contend the trial court erred in viewing the change effected by charter amendment H as an impairment of the vested contractual pension rights of plaintiffs. We disagree.

As defendants acknowledge, this issue was decided adversely to their position in *Pasadena Police Officers Assn. v. City of Pasadena* (1983) 147 Cal.App.3d 695 [195 Cal.Rptr. 339]. They suggest, however, that this court disregard *Pasadena Police Officers Assn.*, in that the decision directly conflicts with preexisting law, is anomalous and is contrary to the law as expressed in California Supreme Court opinions. This is, as Presiding Justice Seoville said in another context, "a paradigm of disingenuousness." (*People v. Sellers* (1988) 203 Cal.App.3d 1042, 1051 [250 Cal.Rptr. 345].)

A public employee's entitlement to a pension "is among those rights clearly 'favored' by the law." (*Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 390 [216 Cal.Rptr. 733, 703 P.2d 73].) Accordingly, pension laws are to be liberally construed to protect pensioners and their dependents from economic insecurity. (*Ibid.*) Unlike other terms of public employment, which are wholly a matter of statute, pension rights are obligations protected by the contract clause of the federal and state Constitutions (U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9). (*Miller v. State of California* (1977) 18 Cal.3d 808, 814 [135 Cal.Rptr. 386, 557 P.2d 970]; see also *Hittle v. Santa Barbara County Employees Retirement Assn.*, *supra*, 39 Cal.3d at p. 390.)

*Miller* nicely recapitulates the modern law of public employment pension rights. As the Supreme Court notes,

“upon acceptance of public employment [one] acquire[s] a vested right to a pension *based on the system then in effect.*” (18 Cal.3d at p. 817, italics added; accord, *Carman v. Alvord* (1982) 31 Cal.3d 318, 325 [182 Cal.Rptr. 506, 644 P.2d 192].)<sup>3</sup> “The scope of permissible modifications of vested pension rights was established in *Allen v. City of Long Beach* (1955) 45 Cal.2d 128 . . . , and *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438 . . . : ‘Such modifications must be reasonable, and it is for the courts to determine upon the facts of each case what constitutes a permissible change. To be sustained as reasonable, alterations of employees’ pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.’ [Citation.] ‘[I]t is advantage or disadvantage to the particular employees whose own contractual pension rights, already earned, are involved which are the criteria by which modifications to pension plans must be measured.’ [Citation.]” (*Miller, supra*, 18 Cal.3d at p. 816.)

*Miller* reaches the conclusion the plaintiff had, *under the system in effect when he accepted public employment*, acquired a vested right to achieve maximum benefits by working to age 70. (*Id.*, at p. 817.) Before he reached that age, the state changed the mandatory retirement age from 70 to 67. It was free to do so, since the duration of public employment is a matter of statute rather than contract. (*Id.*, at pp. 813-814.)

---

<sup>3</sup>A public employee likewise acquires a vested right to additional pension benefits thereafter conferred during his or her subsequent employment. (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866 [148 Cal.Rptr. 158, 582 P.2d 614]; accord, *Olson v. Cory* (1980) 27 Cal.3d 532, 540 [178 Cal.Rptr. 568, 636 P.2d 532].)

The Supreme Court then holds: "Although [plaintiff's] right to a pension based on this system *was vested*, plaintiff was not assured of receiving maximum pension benefits. His right to receive such benefits was subject to conditions and contingencies; specifically, that he remain in state employment until age 70. Plaintiff failed to satisfy that condition since he was lawfully placed on retirement at age 67. Thus, his right to a maximum pension based on retirement at age 70 never matured. [¶] ... Although [plaintiff] was entitled to earn increased pension benefits so long as he remained in state employment ..., plaintiff had no vested contractual right to continue working for any specified period of time. ... [¶] ... 'The fact that a pension right is vested will not, of course, prevent its loss upon the occurrence of a condition subsequent such as lawful termination of employment before completion of the period of service designated in the pension plan.' [Citation.]" (*Miller, supra*, 18 Cal.3d at p. 817, italics added.) In such a situation, it is unnecessary to "undertake the method of analysis required by *Allen and Abbott* for determining whether the changes in the state's pension system were reasonable." (*Id.*, at p. 818.)

*Pasadena Police Officers Assn.* accurately states the law as expressed in *Miller and Betts, supra*, 21 Cal.3d 859. (147 Cal.App.3d at pp. 701-702.) In both *Pasadena Police Officers Assn.* and the instant matter, there is no question of a change in the duration or any term of employment except the pension benefits to be afforded the plaintiffs. Without question, a reduction in the cost of living adjustments to pension benefits does not impose a condition subsequent which affects the maturation of the plaintiffs' pension rights, but burdens them with a disadvantage. It is equally clear charter amendment H affords plaintiffs no comparable advantage. It neither reduces the contribu-

tions they must make from their salaries (see, e.g., *Houghton v. City of Long Beach* (1958) 164 Cal.App.2d 298, 311-312 [330 P.2d 918]) nor confers on them any new advantage. This, too, is the conclusion reached in *Pasadena Police Officers Assn.*, *supra*, 147 Cal.App.3d at p. 702.)

Notwithstanding the clarity of the law as expressed in *Miller v. State of California*, *supra*, 18 Cal.3d 808 and *Betts v. Board of Administration*, *supra*, 21 Cal.3d 859 and accurately applied in *Pasadena Police Officers Assn.*, defendants insist preexisting law is contrary to that expressed in *Pasadena Police Officers Assn.* and is instead embodied in *Houghton v. City of Long Beach*, *supra*, 164 Cal.App.2d 298. *Houghton* considers a 1945 charter amendment by which the city attempted to repeal all police and firefighter pensions. The amendment permitted a member of the pension system who, on its effective date, had served for 20 years (the first point at which a pension was payable) or more to retire within five years and receive a pension based on his years of service to the effective date of the amendment (*Id.*, at pp. 306-307.) This particular aspect of the amendment had been held valid in three previous decisions, beginning with *Palaske v. City of Long Beach* (1949) 93 Cal.App.2d 120 [208 P.2d 764] and continuing through *Allen v. City of Long Beach* (1950) 101 Cal.App.2d 15 [224 P.2d 792] and *Allstot v. City of Long Beach* (1951) 104 Cal.App.2d 441 [231 P.2d 498].

In *Houghton*, plaintiffs argued the preceding decisions had been implicitly overruled by *Allen v. City of Long Beach* (1955) 45 Cal.2d 128 [287 P.2d 765]. *Houghton* rejects this position, correctly noting the Supreme Court case dealt with entirely separate portions of the amendment and distinguished the earlier appellate cases. (164

Cal.App.2d at pp. 309-310.) The three earlier cases relied on *Kern v. City of Long Beach* (1947) 29 Cal.App.2d 848 [179 P.2d 799]. *Palaske* concludes, "the employee has a vested right only to a substantial or reasonable pension. His contractual right to such a pension has not been impaired by legislation which, operating prospectively, merely withdraws any right or option to earn a bonus by continuing in employment after he has become eligible for retirement." (93 Cal.App.2d at p. 132.) *Houghton* follows this reasoning and the *Palaske* line of cases in part because the city long had relied on these decisions. (164 Cal.App.2d at p. 311.) However, the court also notes, without labeling it as such, the comparable advantage plaintiffs gained for suffering the disadvantage worked by the amendment, i.e., they were not required after the effective date of the amendment to contribute 2 percent of their salaries to the pension fund. (*Id.*, at pp. 311-312.) Clearly, the case is correctly decided on this basis in accord with the principles set forth in *Allen v. City of Long Beach*, *supra*, 45 Cal.2d 128.

*Pasadena Police Officers Assn.* reaches a different conclusion, finding "the *Palaske* line of cases cannot be reconciled with the comparable new advantages test of *Allen* and subsequent cases." (147 Cal.App.3d at p. 705.) While we disagree, the foregoing conclusion is not necessary to the decision in *Pasadena Police Officers Assn.* Moreover, it neither makes the case "bad law" nor conflicts with preexisting law. If defendants did indeed rely on *Houghton*, they did so without justification and with unequivocal disregard for the law as it is expressed in *Miller v. State of California*, *supra*, 18 Cal.3d 808 and *Betts v. Board of Administration*, *supra*, 21 Cal.3d 859.

Defendants also argue *Pasadena Police Officers Assn.* is an anomaly in the law, in that an employee's rights to

compensation are set by the law applicable at the time his or her services are rendered. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 23 [157 Cal.Rptr. 706, 598 P.2d 866].) *Longshore* deals with direct, not deferred, compensation and an attempt to claim retroactively the benefit of a subsequently-enacted ordinance to receive money in lieu of compensatory time off for overtime hours worked. (*Ibid.*) It is well settled that a public employer is constitutionally prohibited from awarding compensation retroactively. (*Ibid.*) As explained *ante*, all terms of public employment other than pension rights, including hours to be compensated, are wholly a matter of statute. (*Miller v. State of California, supra*, 18 Cal.3d at pp. 813-814.) These aspects of public employment ripen into obligations protected by the contract clause of the federal and state Constitutions only upon an employee's actual performance. (*Longshore, supra*, at p. 23) In contrast, deferred compensation in the form of pension rights has the status of a contractual obligation from the moment one accepts public employment. (*Miller, supra*, at pp. 814, 817.) If this creates an anomaly in the law, it is one sanctioned by the California Supreme Court.

Defendants next argue, even if vested contractual rights are at issue, charter amendment H was permissible, in that plaintiffs' contract with the city has not been breached. Defendants rely on *International Assn. of Firefighters v. City of San Diego* (1983) 34 Cal.3d 292 [193 Cal.Rptr. 871, 667 P.2d 675] for this proposition. *International Assn. of Firefighters* deals with a public employer's attempt to raise the contribution rate required of its firefighter members in support of an actuarially based retirement system.

The Supreme Court examines the prior case law relating to vested pension rights noting: "What distinguishes

each of these cases from the one before us is the nature of the contractual rights which became vested in plaintiff's members upon their acceptance [or continuation] of employment. In the cases relied upon by plaintiff, employees' vested contractual rights were modified by amendment of the controlling provisions of the retirement system in question to reduce (or abolish) the net benefit available to the employees. In the present case, no modification was made in the retirement system; instead, the revision[s] . . . were made *pursuant to* the charter and ordinances which delineate City's retirement system and prescribe the employees' vested rights." (*Id.*, at p. 302, italics original.) Clearly, the instant matter falls into the former category and not the latter. *International Assn. of Firefighters* thus is of no assistance to defendants.

Defendants also rely on the following well-settled principle of contract law: "[I]f it appears that the parties contracted in contemplation of the continued existence of a thing, so that, reasonably construed, the contract requires that thing to be in existence, its destruction or such impairment as makes it unavailable excuses the promisor, unless he has in the contract assumed the risk of its destruction." (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 785, p. 708, italics deleted.) It is defendants' position that the charter provisions establishing articles XVII and XVIII in 1966 and uncapping the cost of living adjustment in 1971 were enacted in contemplation of the continued existence of specific funding through increases in the property tax levies, a prospect which evaporated upon the enactment of Proposition 13 and its limitations on real property taxes. They view charter sections 186.2 and 190.09 as demonstrating this reliance.

Sections 186.2 and 190.09 provide that the city council or controller annually shall "levy, in addition to all other taxes levied by the City, a tax clearly sufficient to provide the total amount of all items in [the pension system] budget." To levy is simply to impose or collect a tax — any tax. (Webster's New Collegiate Dict. (6th ed. 1979) p. 655, col. 2.) Nothing in the language of these charter sections limits the source of revenue to property taxes (indeed, the sections refer to "all other taxes") and, contrary to defendants' assertion, *McAlpine v. Baumgartner* (1937) 10 Cal.2d 409 [74 P.2d 753] does not construe similar language as so limited. This language clearly creates a general funding obligation, not a specific one. In any event, the passage of Proposition 13 did not impair the city's ability to levy an additional property tax to meet this pre-1978 voter-approved indebtedness. (*Carman v. Alvord*, *supra*, 31 Cal.3d at p. 322.)

In view of the foregoing conclusions, it is clear the city's ability to meet its obligation to fund the pension systems remained unimpaired, notwithstanding Proposition 13. Hence, the passage of Proposition 13 did not make unavailable an item specifically contemplated as continuing in existence. It necessarily follows that this event could not serve to excuse the city's contractual obligations to plaintiffs. As *Pasadena Police Officers Assn. v. City of Pasadena*, *supra*, 147 Cal.App.3d notes at page 704, footnote 3, it is settled law that, "in the absence of a clear and unequivocal declaration in the pension provisions that benefits are payable only to the extent of available funds from specified contributions, the liability to pay promised pension benefits is a general obligation of the city." (Accord, *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 348-352 [71 Cal.Rptr. 135, 444 P.2d 711].)

Defendants further rely on the principle that any contract incorporates the law existing as of the time of its formation, i.e., the nature and extent of the obligation "must be ascertained not only from the language of the pension provisions but also from the judicial construction of this or similar legislation at the time the contractual relationship was established." (*Kern v. City Long Beach*, *supra*, 29 Cal.2d at p. 850; see also *City of Torrance v. Workers' Comp. Appeals Bd.* (1982) 32 Cal.3d 111, 378 [185 Cal.Rptr. 645, 650 P.2d 1162].) Their reliance is misplaced. As noted *ante*, the applicable law is embodied in *Miller v. State of California*, *supra*, 18 Cal.3d 808 and *Betts v. Board of Administration*, *supra*, 21 Cal.3d 859, *not* in *Houghton v. City of Long Beach*, *supra*, 164 Cal.App.2d 298.

Finally, defendants argue charter amendment H cannot be viewed as "substantially" impairing plaintiffs' vested rights, in that their reasonable expectations have not been defeated; thus, it is not subject to attack under the contract clause even though it technically alters a contractual obligation. (*Allen v. Board of Administration* (1983) 34 Cal.3d 114, 124 [192 Cal.Rptr. 762, 665 P.2d 534].) Defendants note it is entirely permissible to adjust a contract to prevent a party from receiving a windfall profit (*Energy Reserves Group v. Kansas Power & Light* (1983) 459 U.S. 400, 412 [74 L.Ed.2d 569, 581, 103 S.Ct. 697]), and take the position those system members who became public employees prior to 1971 received just that from the uncapping of the cost of living adjustment.

Again it is clear this argument will not withstand scrutiny. As noted *ante*, plaintiffs have a vested right not only to benefits substantially similar to those in effect when they accepted public employment (*Carman v. Alvord*, *supra*, 31 Cal.3d at p. 325; *Miller v. State of Califor-*

nia, *supra*, 18 Cal.3d at p. 817), but also to additional benefits offered later by the public employer (*Betts v. Board of Administration, supra*, 21 Cal.3d at p. 866). Accordingly, those system members who accepted public employment prior to 1971 have *not* received a "windfall profit" from the uncapping of the cost of living adjustment in 1971, but only their due. While it is true reasonable contractual expectations generally are to be measured as of the date the contractual relationship began (*Allen v. Board of Administration, supra*, 34 Cal.3d at pp. 124-125), the contractual relationship at issue here was modified by uncapping of the cost of living adjustment in 1971. Thus, in accord with *Betts, supra*, the reasonable expectations of plaintiffs in the instant matter must be measured as of that date.

In defendants' eyes, plaintiffs could have had only one reasonable post-1971 expectation — that their standard of living in retirement, despite inflation, would be as high as their standard of living during their terms of active service. This utterly misconstrues the city's retirement system. The expectation defendants describe as reasonable would, in truth, be wholly unreasonable. Plaintiffs do not now and never have had an opportunity to earn a pension equivalent to their salaries upon retirement; the opportunity is limited to a minimum pension benefit of 40 percent of salary and a maximum benefit of 70 percent. It is clear plaintiffs must expect a postretirement diminution in their standard of living. However, once the cost of living adjustment was uncapped in 1971, plaintiffs did have a reasonable expectation that pension benefits earned thereafter would be fully adjusted for inflation and their post-retirement standards of living thus would be protected from any *further* diminution. Without ques-

tion, charter amendment H defeats this expectation.<sup>4</sup> Moreover, the modification embodied in charter amendment H is *not* consistent with existing state law and thus cannot be viewed as working no substantial impairment of plaintiffs' reasonable expectations. (Cf. *City of Torrance v. Workers' Comp. Appeals Bd.*, *supra*, 32 Cal.3d at p. 378.)

## II

Defendants further contend the trial court applied the wrong legal standard in determining whether charter amendment H impermissibly violated the contract clause. Again, we disagree.

A law or ordinance which substantially impairs a contractual obligation nonetheless may be constitutional. As the United States Supreme Court has noted, "[a]lthough the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests

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<sup>4</sup>Defendants claim to have evidence, in the form of an economic analysis by Professor Shoven which was erroneously excluded at trial, which demonstrates the standard of living of a retired police officer or firefighter throughout retirement would be higher than in his or her last year of active service — even after allowing for the effect of charter amendment H. The assertion that exclusion of this evidence was erroneous is made in passing, without legal argument, the citation of authority or explication of the ground upon which the evidence was excluded. Therefore, the point properly may be deemed waived on appeal. (*Henderson v. Security Nat. Bank* (1977) 72 Cal.App.3d 764, 769 [140 Cal.Rptr. 388].) In any event, the proposition this evidence purportedly "proves" is impossible. There is no conceivable way in which an officer retiring on 40 to 70 percent of his or her salary and thereafter receiving cost of living adjustments equal only to actual inflation in that cost *ever* could equal, let alone exceed, the standard of living he or she enjoyed in the last year of active service

of its people.' [Citing *Home Bldg. & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 434 (78 L.Ed. 413, 426-427, 54 S.Ct. 231).] In *Blaisdell*, the Court . . . balanced the language of the Contract Clause against the State's interest in exercising its police power. . . . [The Court listed five factors that were then deemed to be significant in its analysis: whether the Act (1) was an emergency measure; (2) was one to protect a basic societal interest, rather than particular individuals; (3) was tailored appropriately to its purpose; (4) imposed reasonable conditions; and (5) was limited to the duration of the emergency. (Citation.)]" (*Energy Reserves Group v. Kansas Power & Light, supra*, 459 U.S. at p. 410 and fn. 11 [74 L.Ed.2d at p. 580].)

*Energy Reserves Group* continues: "The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.' [Citing *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244 (57 L.Ed.2d 727, 736, 98 S.Ct. 2716) and *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 17 (52 L.Ed.2d 92, 106, 97 S.Ct. 1505).] The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. [Citing *Allied Structural Steel Co., supra*, at p. 245 (57 L.Ed.2d at p. 737).] Total destruction of contractual expectations is not necessary for a finding of substantial impairment. [Citing *United States Trust Co., supra*, at pp. 26-27 (52 L.Ed.2d at p. 106).] On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. [Citing 431 U.S. at p. 31 (52 L.Ed.2d at p. 115) and *El Paso v. Simmons* (1965) 379 U.S. 497, 515 (13 L.Ed.2d 446, 458, 85 S.Ct. 577).] . . .

"If the State regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation [citing *United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 22 (52 L.Ed.2d at p. 109)], such as the remedying of a broad and general social or economic problem. [Citing *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at pp. 247, 249 (57 L.Ed.2d at pp. 738-739).] Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. [Citing *United States Trust Co.*, *supra*, at p. 22, fn. 19 (52 L.Ed.2d at p. 110) and *Veix v. Sixth Ward Assn.* (1940) 310 U.S. 32, 39-40 (84 L.Ed. 1061, 1066-1067, 60 S.Ct. 792).] ... The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

"Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.' [Citing *United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 22 (52 L.Ed.2d at pp. 109-110).] *Unless the State itself is a contracting party* [citing 431 U.S. at p. 23 (52 L.Ed.2d at p. 110)], '[a]s is customary in reviewing economic and social regulation, ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.' [Citing 431 U.S. at pp. 22-23 (52 L.Ed.2d at pp. 109-110).] [When a State itself enters into a contract, it cannot simply walk away from its financial obligations. In almost every case, the Court has held a governmental unit to its contractual obligations when it enters financial or other markets. (Citations.) When the State is a party to the contract,

'complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.' (Citing 431 U.S. at p. 26 (52 L.Ed.2d at p. 112).)" (459 U.S. at pp. 411-413 and fn. 14 [74 L.Ed.2d at pp. 580-581], italics added, some fns. omitted.)

In other words, "[a] governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." (*United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 26 [52 L.Ed.2d at p. 112].) Therefore, the existence of an important public purpose is not necessarily enough in itself to justify a substantial contractual impairment. (*Id.*, at p. 21 [52 L.Ed.2d at p. 109].) It is settled that governmental entities are bound by their debt obligations. (*Id.*, at p. 24 [52 L.Ed.2d at p. 111].) Thus, "a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors. [A court] can only sustain [an impairment] if that impairment [is] both reasonable and necessary to serve the . . . important purposes claimed by the State." (*Id.*, at p. 29 [52 L.Ed.2d at p. 114]; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 307-308 [152 Cal.Rptr. 903, 591 P.2d 1].)

A determination of necessity requires an evaluation of whether a less drastic modification of the contractual obligation or other steps which entailed no modification would have permitted the governmental entity to meet its goals, for "a State is not completely free to consider

impairing the obligations of its own contracts on a par with other policy alternatives. Similarly, a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." (*United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at pp. 30-31 [52 L.Ed.2d at p. 115].) In addition, a change of circumstances will not justify a substantial impairment unless it was unforeseen and unforeseeable. (*Id.*, at pp. 31-32 [52 L.Ed.2d at pp. 115-116]; *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra*, 23 Cal.3d at p. 308.)

Where a change in law works "a 'severe, permanent and immediate change' " in contractual rights, an assessment of constitutionality requires " 'a careful examination of ... [its] nature and purpose.' " (*Id.*, at p. 309, quoting from *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at pp. 245, 250 [57 L.Ed.2d at pp. 737, 740].) In these circumstances, the impairment requires a "compelling state interest," as well as necessity. (See, e.g., 438 U.S. at pp. 242, 247 [57 L.Ed.2d at pp. 735, 738].) Only the minimal impairment necessary to attain the governmental entity's proposed legitimate end may be visited upon parties to contracts. However, this concept "has no proper application as a vague license for the state to impair its obligation so long as it is only 'a little bit.' " (*California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 511 [202 Cal.Rptr. 611].)

Defendants contend the trial court erroneously relied on the five factors identified in *Home Bldg. & Loan Assn. v. Blaisdell*, *supra*, 290 U.S. 398, instead of assessing whether charter amendment H is reasonable and necessary to serve legitimate and important public purposes identified by defendants (*United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 29 [52 L.Ed.2d at p. 114]). In

particular, they point to the court's finding that defendants had not met their burden of proving the enactment of charter amendment H was justified by an emergency or serious fiscal crisis. What defendants overlook is that they in large part *relied* on the existence of such an emergency or fiscal crisis.

Defendants argued the charter amendment was reasonable and necessary to effect the following public purposes: (1) preserve the city's financial soundness by reducing public spending on pension costs, (2) enhance the ability to predict and plan for long-range city budgeting and financing, (3) enable the city to continue providing essential public services, (4) preserve the soundness and integrity of the pension system itself and (5) respond to the declining morale of noncovered public employees. Purposes (1), (3) and (4) clearly portend the imminence of an emergency or serious fiscal crisis in this particular context.

Defendants took the position that unexpected and unforeseen increases in the rate of inflation had caused pension costs to escalate sharply, exceeding salary increases, the enactment of Proposition 13 destroyed the traditional funding mechanism for the pension systems and these factors combined to create a budgetary crisis in an era of increasingly scarce sources of public revenue. The trial court first noted the established principle that a desire to reduce costs or limit public spending does not justify the abrogation or impairment of a public entity's contractual obligations notwithstanding the legitimacy of such a public purpose. (*Lynch v. United States* (1934) 292 U.S. 571, 580 [78 L.Ed. 1434, 1441, 54 S.Ct. 840], cited with approval in *United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 26, fn. 25 [52 L.Ed.2d at p. 112]; *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 455

[326 P.2d 484]; *Larionoff v. United States* (D.C. Cir. 1976) 533 F.2d 1167, 1179-1180; see also *Continental Ill. Nat. Bank, Etc. v. State of Wash.* (9th Cir. 1983) 696 F.2d 692, 702, appeal dismissed. (1983) 460 U.S. 1077 [76 L.Ed.2d 338, 103 S.Ct. 1762].) Thereafter, the court examined the evidentiary underpinnings of defendants' stance.

The court noted the evidence established that the growth of the pension systems' unfunded liabilities to \$3.37 billion occurred primarily because defendants took a number of actions which failed to conform to sound actuarial practice in the area of pension funding. Specifically, the article XVII pension system had been funded on a "pay-as-you-go" basis from 1923 until 1959. Consequently, when the article XVIII pension system was created in 1967, it had unfunded liabilities of \$258 million from the outset. In addition, the initial amortization period of 50 years during which to retire unfunded liabilities, which was adopted in 1959, was changed to a period of 70 years in 1967, thereby decreasing the stability of the pension systems.

For many years, the pension board failed to assume realistic projections of annual increases in the Consumer Price Index and failed to consider at all the impact of active pension system members' annual salary increases. Further, when the pension board began in 1976 to factor projected salary increases into its actuarial funding evaluations, it failed to make realistic assumptions concerning such increases. Finally, in 1976, defendants decided to change the city's contributions to the pension systems from a level dollar amount to a payroll percentage; this led to a short-term reduction in the size of the contributions to the pension system, but in the long run increased the required level of contribution.

Based on the evidence, the trial court thus concluded any instability or loss of integrity and soundness in the pension systems resulted principally from the foregoing acts and omissions, *not* from full cost of living adjustments indexed to the Consumer Price Index. Since the latter did not *cause* the problem, the trial court reasonably inferred capping the cost of living adjustment at 3 percent could not sensibly be viewed as a *cure* for the problem, in that a public entity cannot justify the impairment of its contractual obligations on the basis of the existence of a fiscal crisis created by its own voluntary conduct. (See *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra*, 23 Cal.3d at p. 313.) This conclusion was buttressed by evidence which indicated funding a full cost of living adjustment would require \$43 million in additional annual funding, which amounted to less than 1 percent of the city's total budget and less than 2 percent of the city's general budget.

Moreover, the trial court correctly recognized that charter amendment H bears no material relation to the theory of a pension system and its successful operation. Basically, the theory of a pension system is affording retirees with a reasonable degree of economic security (*Hittle v. Santa Barbara County Employees Retirement Assn.*, *supra*, 39 Cal.3d at p. 390) and the sole legitimate purpose of a cost of living adjustment is the preservation of a retiree's standard of living (*Allen v. Board of Administration*, *supra*, 34 Cal.3d at p. 122). Charter amendment H has no tendency to effectuate these aims; rather, it lessens a retiree's economic security, impairing rather than preserving his or her standard of living. Neither does it have any particular relation to the successful operation of the pension systems. While it reduces the benefits which must be paid, it in no manner enhances the integrity or soundness of the funds, for it does not require

the maintenance of the same or a similar level of funding. Indeed, after the enactment of charter amendment H, defendants contributed to the pension systems no portion of the additional \$43 million which otherwise would be required annually to fully fund a Consumer Price Index-related cost of living adjustment; instead, they either spent this sum on other items or added it to the city's general reserve fund. The amendment's lack of any material relation to the theory of a pension system or its successful operation clearly supports the conclusion it was neither reasonable nor necessary to the maintenance of the integrity and soundness of the pension systems.

The trial court also noted that the chief administrative officer had recommended against uncapping the cost of living adjustment in 1971, pointing out the risk of introducing budgeting unpredictability due to the fluctuating, cyclical nature of inflation. City officials acknowledged this and admitted they chose to assume the risk. Hence, the evidence clearly establishes the escalating cost of living adjustments caused by the ensuing rises in the rate of inflation was not an unforeseen and unforeseeable change in circumstances. Inasmuch as it was not unforeseen and the change in circumstances was "of degree and not kind," the enactment of charter amendment H was not justified on this ground as a reasonable response to the problem. (*United States Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 31 [52 L.Ed.2d at p. 115]; *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra*, 23 Cal.3d at p. 308; *Continental Ill. Nat. Bank, Etc. v. State of Wash.*, *supra*, 696 F.2d at p. 702.)

As to the passage of Proposition 13, contrary to defendants' stance, this did not impair their ability to assess an ad valorem property tax to meet the funding requirements of the pension funds. (*Carman v. Alvord*, *supra*, 31 Cal.3d

at pp. 332, 333-334.) This was a settled question of law in 1981, prior to the placement of charter amendment H on the ballot. Moreover, as the trial court noted, the passage of Proposition 13 was itself state action and thus could not constitutionally disable defendants from paying the city's legitimate legal obligations by depriving them of the taxing power necessary to raise the required funds. (*Louisiana ex rel. Hubert v. New Orleans* (1909) 215 U.S. 170, 175-176 [54 L.Ed. 144, 147-148, 30 S.Ct. 40]; see also *United States Trust Co. v. New Orleans*, *supra*, 431 U.S. at p. 24, fn. 22 [52 L.Ed.2d at p. 111].) Hence, however unforeseen and unforeseeable it might have been, the passage of Proposition 13 cannot reasonably be viewed as creating a fiscal crisis which justified the impairment of the city's contractual obligations.<sup>5</sup>

At this point, it is clear the trial court was eminently justified in concluding defendants had failed to carry their burden of proving the existence of a genuine emergency or severe fiscal crisis of a sort which reasonably and necessarily would be ameliorated by the enactment of charter amendment H. Defendants' proffered "important public purposes" thus are reduced to three: their desire to (1) spend city revenues on other things they deemed more important, (2) enhance the ability to predict and plan for long-range city budgeting and financing and (3) respond to the declining morale of noncovered city employees. The first never justifies the impairment of a public entity's contractual obligations (*United States*

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<sup>5</sup>Defendants argue Revenue and Taxation Code sections 97.2 and 97.6 (enacted by Stats. 1983, ch. 491, §§ 1, 3) cut off this avenue of financing. This is not at all clear (see Rev. & Tax. Code, § 97.65) and, in any event, were it the case these code sections would be subject to the same constitutional objection as is article XIII A of the California Constitution (Proposition 13) itself.

*Trust Co. v. New Jersey*, *supra*, 431 U.S. at p. 26 [52 L.Ed.2d at p. 112]) and neither does the third (*Allen v. City of Long Beach*, *supra*, 45 Cal.2d at p. 133). This leaves only the second proffered purpose.

Unquestionably, enhancing the ability to predict and plan for long-range city budgeting and financing is an important public purpose. However, as the trial court recognized, when the city's own contractual obligation is at issue and the impairment is severe, it is not enough that city officials reached the conclusion the enactment of charter amendment H was reasonable and necessary to achieve that purpose; this judgment must be subjected to careful scrutiny. (*Energy Reserves Group v. Kansas Power & Light*, *supra*, 459 U.S. at pp. 411, 412-413, fn. 14 [74 L.Ed.2d at pp. 580-581]; *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at p. 245 [57 L.Ed.2d at p. 737]; *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra*, 23 Cal.3d at p. 309.)<sup>6</sup>

Where an enactment appears to be somewhat narrowly tailored to modify a particular contractual obligation, rather than to be part of a broad public program which incidentally has the effect of impairing the particular contract, it fails the test. (See, e.g., *Continental Ill. Nat. Bank, Etc. v. State of Wash.*, *supra*, 696 F.2d at p. 702.) This is the case here, particularly since the passage of Proposition 13 did not in fact impair defendants' ability to levy a separate ad valorem property tax specifically to meet the pension system funding requirements. Further, in adopting cost-cutting measures to further an important public purpose, there must be some indication the public entity has given considered thought to the severity of the

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<sup>6</sup>This disposes of defendants' claim that the trial court failed to give appropriate deference to defendants' conclusions.

effect an enactment might have on the particular contractual scheme at issue and to the possibility of alternative, less drastic, means of accomplishing the public goal. (*Valdes v. Cory* (1983) 139 Cal.App.3d 773, 791 [189 Cal.Rptr. 212]; see also *United States Trust Co v. New Jersey*, *supra*, 431 U.S. at p. 30 [52 L.Ed.2d at pp. 114-115].) Here, there is no such indication.

Notwithstanding the foregoing, defendants rely heavily on *Md. State Teachers Ass'n. v. Hughes* (D.Md. 1984) 594 F.Supp. 1353, which they view as squarely on point with the instant matter. Of course, even if that view were correct, a decision of a federal district court has no precedential value in this court; at best, it is persuasive authority only. (*Rohr Aircraft Corp. v. County of San Diego* (1959) 51 Cal.2d 759, 764 [336 P.2d 521]; *Debtor Reorganizers, Inc. v. State Bd. of Equalization* (1976) 58 Cal.App.3d 691, 696 [130 Cal.Rptr. 64].)

More importantly, *Md. State Teachers Ass'n.* clearly is distinguishable from this case. The original Maryland retirement system provided full postretirement cost of living adjustments and other defined benefits in exchange for required contributions of 5 percent of salary. In 1979, Maryland created a two-tiered retirement system. An employee could elect to transfer to a new pension system, which capped cost of living adjustments at 3 percent; if the employee did so, he or she would not be required to make any contributions from salary except to the extent the salary exceeded the Social Security wage base. An employee who elected to remain in the present pension system retained fully indexed cost of living adjustments and continued to make contributions of 5 percent of salary. In 1984, Maryland offered four retirement benefit options: (1) transfer to the pension system created in 1979 with a partial refund of the employee's contribu-

tions; (2) a bifurcation under which an employee retained fully indexed cost of living adjustments to the effective date of the legislation and thereafter accrued benefits with a 3 percent cost of living adjustment cap, in which event future contributions would be required only from salary which exceeded the Social Security wage base; (3) the retention of past and future credits in the retirement system, all subject to a 5 percent cost of living adjustment cap and to contributions of 5 percent of salary or (4) the retention of a fully indexed cost of living adjustment with an increase in required salary contributions from 5 to 7 percent. (594 F.Supp. at pp. 1357-1358.)

Under Maryland law, future pension benefits vest as they are *proratedly earned*. (*Id.*, at pp. 1362-1363; *City of Frederick v. Quinn* (1977) 35 Md.App. 626 [371 A.2d 724, 726].) This is contrary to California law. (*Miller v. State of California*, *supra*, 18 Cal.3d at p. 817; accord, *Carman v. Alvord*, *supra*, 31 Cal.3d at p. 325.) Moreover, in Maryland, a governmental entity may modify benefits not only if there is an offsetting new benefit or liberalized qualifying condition, as in California, but also if the modification is justified by countervailing public welfare equities. (*Md. State Teachers Ass'n. v. Hughes*, *supra*, 594 F.Supp. at p. 1362; *City of Frederick v. Quinn*, *supra*, 371 A.2d at p. 726.) Based on the foregoing, the district court concludes, "the challenged legislation does *not* operate to deny vested or merely earned pension rights retroactively." (*Md. State Teachers Ass'n.*, *supra*, at p. 1363, italics original.) Again, this is contrary to California law. (*Pasadena Police Officers Assn. v. City of Pasadena*, *supra*, 147 Cal.App.3d at pp. 701-702.)

Given this analysis, it is apparent the district court's subsequent conclusions that, *if* any vested contractual rights were impaired, there was no need to apply height-

ened scrutiny to the state's asserted justification and the modifications were reasonable and necessary to accomplish important public purposes (*Md. State Teachers Ass'n.*, *supra*, 594 F.Supp. at pp. 1370-1372) are at most dicta. Moreover, the former conclusion clearly is erroneous (see *Allied Structural Steel Co. v. Spannaus*, *supra*, 438 U.S. at p. 245 [57 L.Ed.2d at p. 737]) and, in view of that error, the latter dictum has little persuasive force.

In sum, we conclude the trial court applied the correct legal standards and reasonably found defendants failed to justify the impairment of plaintiffs' contractual rights. Accordingly, there is no error requiring reversal.

Defendants make similar arguments concerning the proration provision of charter amendment H. Prior to the enactment of charter amendment H, the pension board met each year and determined the percentage by which the Consumer Price Index had increased during the 12 months preceding March 1, then adjusted the pensions of retired members by this percentage, effective July 1, the beginning of the next fiscal year. The proration provision of charter amendment H ended this practice. Instead, the cost of living adjustment would be prorated according to the number of months since January 1 of each year an employee retiring in that calendar year had been retired.

Defendants argue this provision of charter amendment H did nothing but deprive retiring employees of a wind-fall. As they perceive matters, the mechanics of the former system produced an obvious abuse: An employee could retire on June 1, collect a pension for one month at the existing rate, and then collect a cost of living adjusted pension effective July 1 even though the employee had not retired prior to the March 1 evaluation date. Defendants' misperception is based upon an erroneous analysis of the city's fiscal operation.

The city's budget covers a fiscal year extending from July 1 to June 30; thus, any cost of living adjustments to pensions necessarily must become operative at the beginning of each budgetary period, i.e.; each fiscal year. Such an increase is intended to compensate for the decrease in purchasing power which has occurred during the preceding fiscal year. However, it takes time to collect, absorb and process data concerning the rate of inflation. This results in a time lag of approximately four months. Were the pension board to wait until data to June 1 was available, there would be insufficient time to include adjustments in the budget to become effective on July 1. This, however, results in no windfall to retirees.

An employee retiring at any point in any particular fiscal year receives pension benefits entirely unadjusted for the creeping effects of inflation during that fiscal year. It is only during the second fiscal year of retirement that an employee receives an adjustment for the diminution in purchasing power that occurred in the *preceding year*. Rather than receiving a windfall, such an employee then receives *less* than a full adjustment for the preceding fiscal year's diminution in the purchasing power of the pension. Since the proration provision of charter amendment H clearly does not serve to eliminate a "windfall," it is no less constitutionally defective than the remainder of the charter amendment.

The judgment is affirmed.

Devich, J., and Ortega, J., concurred.



## APPENDIX B



**CERTIFIED FOR PUBLICATION**  
**B027960 (Super. Ct. Nos. C413752, C418547)**  
**IN THE COURT OF APPEAL**  
**OF THE**  
**STATE OF CALIFORNIA**  

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**SECOND APPELLATE DISTRICT**  

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**DIVISION ONE**  

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**UNITED FIREFIGHTERS OF LOS ANGELES CITY, etc.,**  
**LOS ANGELES POLICE PROTECTIVE LEAGUE et al.,**

*Plaintiffs and Respondents,*

**v.**

**CITY OF LOS ANGELES, BOARD OF PENSION**  
**COMMISSIONERS OF THE CITY OF LOS ANGELES,**

*Defendants and Appellants.*

**ORDER MODIFYING OPINION AND CERTIFYING**  
**OPINION FOR PUBLICATION UPON DENIAL**  
**OF PETITION FOR REHEARING**  

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**THE COURT:**

The opinion filed in the above-captioned matter on April 26, 1989 is modified as follows:

On page 32, following line 7 and preceding line 9, insert the following:

“Defendants make similar arguments concerning the proration provisions of charter amendment H. Prior to the enactment of charter amendment H, the pension board met each year and determined the percentage by which the Consumer Price Index had increased during the 12 months preceding March 1, then adjusted the

pensions of retired members by this percentage, effective July 1, the beginning of the next fiscal year. The proration provision of charter amendment H ended this practice. Instead, the cost of living adjustment would be prorated according to the number of months since January 1 of each year an employee retiring in that calendar year had been retired.

“Defendants argue this provision of charter amendment H did nothing but deprive retiring employees of a windfall. As they perceive matters, the mechanics of the former system produced an obvious abuse: An employee could retire on June 1, collect a pension for one month at the existing rate, and then collect a cost of living adjusted pension effective July 1 even though the employee had not retired prior to the March 1 evaluation date. Defendants’ misperception is based upon an erroneous analysis of the city’s fiscal operation.

“The city’s budget covers a fiscal year extending from July 1 to June 30; thus, any cost of living adjustments to pensions necessarily must become operative at the beginning of each budgetary period, i.e., each fiscal year. Such an increase is intended to compensate for the decrease in purchasing power which has occurred during the preceding fiscal year. However, it takes time to collect, absorb and process data concerning the rate of inflation. This results in a time lag of approximately four months. Were the pension board to wait until data to June 1 was available, there would be insufficient time to include adjustments in the budget to become effective on July 1. This, however, results in no windfall to retirees.

“An employee retiring at any point in any particular fiscal year receives pension benefits entirely unadjusted for the creeping effects of inflation during that fiscal year. It is only during the second fiscal year of retirement that

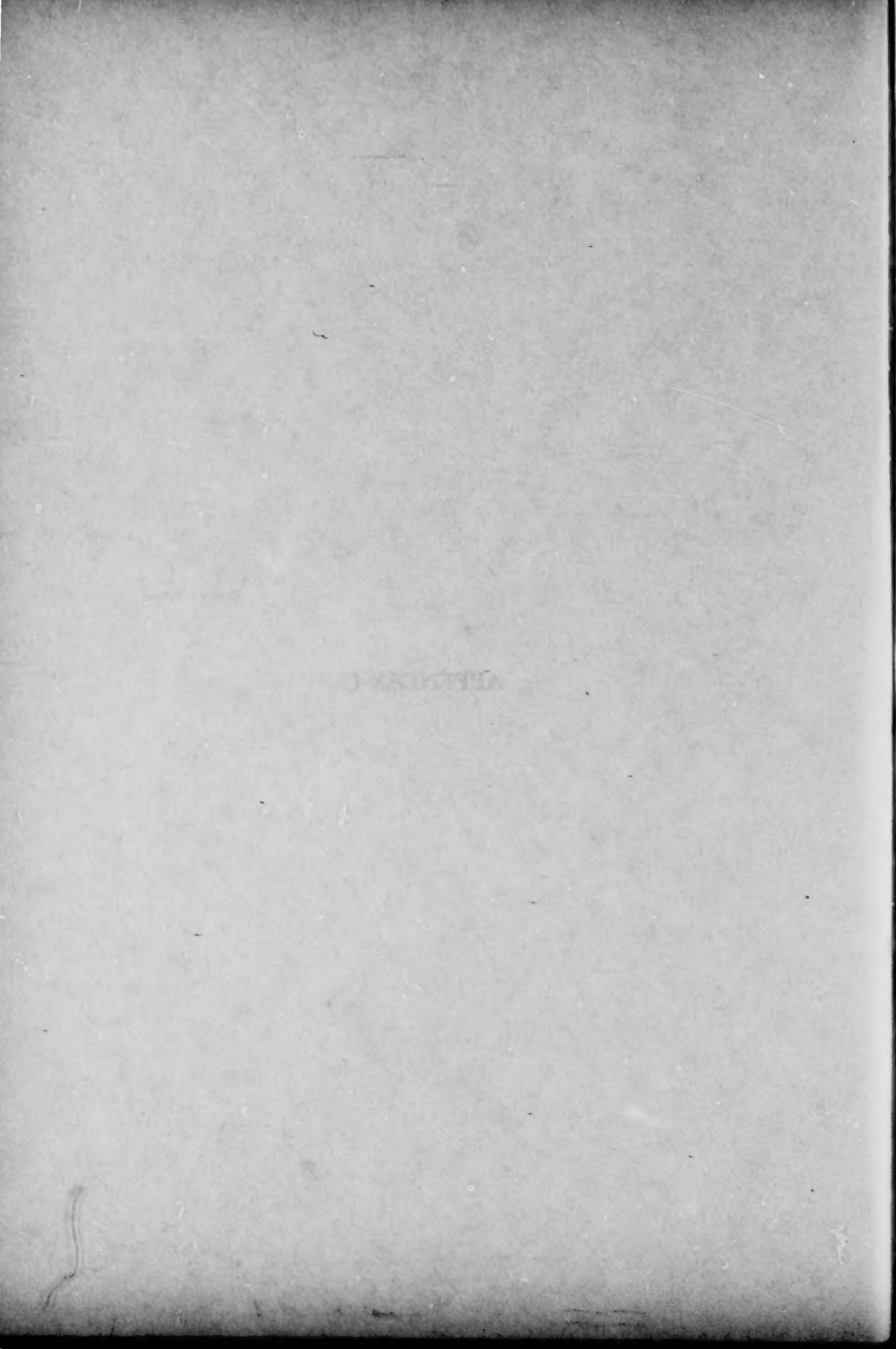
an employee receives an adjustment for the diminution in purchasing power that occurred in the *preceding year*. Rather than receiving a windfall, such an employee then receives *less* than a full adjustment for the preceding fiscal year's diminution in the purchasing power of the pension. Since the proration provision of charter amendment H clearly does not serve to eliminate a 'windfall,' it is no less constitutionally defective than the remainder of the charter amendment."

Good cause appearing therefor, the opinion filed in the above-captioned matter on April 26, 1989, as modified on this date, is certified for publication.

The petition for rehearing filed herein on May 11, 1989, is denied.



## **APPENDIX C**



ORDER DENYING REVIEW  
AFTER JUDGMENT BY THE COURT OF APPEAL  
Second Appellate District, Division One, No. B027960  
S010518

IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

IN BANK

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UNITED FIREFIGHTERS OF LOS ANGELES  
CITY, ETC. Et Al.,  
*Respondents,*

v.

CITY OF LOS ANGELES Et Al.,  
*Appellants.*

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Appellants' petition for review DENIED.

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LUCAS  
Chief Justice



## **APPENDIX D**

APPENDIX D

SUPERIOR COURT OF  
THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
*Plaintiff,*

vs.

CITY OF LOS ANGELES; BOARD OF PENSION  
COMMISSIONERS OF THE CITY OF LOS ANGELES,  
*Defendants.*

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LOS ANGELES POLICE PROTECTIVE LEAGUE, et al.,  
*Plaintiffs,*

vs.

CITY OF LOS ANGELES; BOARD OF PENSION  
COMMISSIONERS OF THE CITY OF LOS ANGELES,  
*Defendants.*

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Case No. C 413 751 Consolidated with  
Case No. C 418 547

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STATEMENT OF DECISION

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I.

FACTUAL BACKGROUND

Plaintiff, United Firefighters of Los Angeles City ("UFLAC"), a certified representative of firefighters (C 413 752); and plaintiff Los Angeles Police Protective League, a public employee organization (Govt. Code § 3501(b)) representing uniformed personnel of the Los Angeles Police Department, and plaintiffs, five individual police officers (C 418 547), in these actions consolidated for trial seek declaratory relief [Firefighters fourth cause

of action and Police first cause of action] with respect to the validity of City Charter sections 184.96 and 190.143, enacted by Charter Amendment H effective July 1, 1982. All other causes of action were dismissed prior to trial.

The Charter sections in question ("Amendment H") impose a three percent limitation ("3% Cap.") on the annual cost of living adjustments ("COLA") of the pension benefits of members of Article XVII and Article XVIII pension systems who were in active service after July 1, 1982.

Prior to Amendment H, pensions of those members were subject to annual cost of living adjustment according to the Consumer Price Index, without "Cap" or limitation.

Under the terms of Amendment H, the 3% Cap would apply only to that portion of the pension attributable to a pro rata share of the pension benefits earned by years of active service after July 1, 1982 (as compared with the years of service before July 1, 1982). The 3% Cap would not affect the pensions of those members who retired before July 1, 1982 with 25 years of service, and who would continue to receive an annual cost of living increase measured by the Consumer Price Index without any limitation.

Before the passage of Amendment H, members who retired with 25 years or more of service received a full cost of living adjustment on July 1st following their retirement regardless of when they retired during the preceding year. Amendment H Subsection (A)(3) of sections 184.96 and 190.143 (hereinafter referred to as the "Proration" section) modified this by providing that such a retired member's cost of living adjustment on the first July 1 after "retirement" would be  $\frac{1}{12}$ th the annual

cost of living adjustment multiplied by the number of months since retirement.

The Article XVII and Article XVIII Pension Systems were closed and a new Pension System Article XXXV was established by City Charter Amendment, enacted by the voters as Proposition G in 1980. Any new employee employed on December 1, 1980 or thereafter would be a member of the new Article XXXV Pension System with a capped 3% Annual Cost of Living Adjustment on the pension benefits. The parties agree that this change capping the COLA for new employees entering the force on or after December 1, 1980 was legally permissible. The validity of this change is not challenged.

A brief chronology of benefits of the Article XVII and XVIII pension systems is necessary background. (See Stipulated Facts attached at end of Vol. I Rptr. Tr.)

In 1967, Proposition P established the Article XVIII Pension System with the first Consumer Price Index ("CPI") cost of living allowance up to 2%. Proposition P increased the maximum service pension to 70% after 30 years of service, provided that employee members would contribute an additional 1% of their salary over the regular contribution of 6% of salary and permitted the members of the prior Article XVII pension system to transfer to the new Article XVIII system. This transfer created a substantial unfunded liability of \$258 million for the new Article XVIII system at its inception. (City Charter Section 190.09) The amortization period for payment of unfunded liabilities was extended from 50 years to 70 years.

In 1971 Charter Amendment 2 was approved by the voters *effective July 1, 1971* which provided for an *unlim-*

*ited Cost-of-Living Allowance for all pensions (uncapped COLA).*

In 1975 Charter Amendment 9 provided for the uncapped COLA for service-connected disability pensions.

In 1980, Proposition G was approved by the voters creating Article XXXV system for all new employees hired on or after December 1, 1980 and for capping the COLA at 3%. Thus after December 1, 1980, no new members came into the Article XVII and XVIII pension systems.

On June 8, 1982, Proposition H was approved by the voters. It capped the COLA at 3% for pension benefits earned after June 8, 1982 by future service, for Article XVII and XVIII members, and prorated the COLA adjustments for the first year of retirement. It had no effect on those already retired. Further, it provided for City Council discretion to grant COLA increases up to  $\frac{1}{2}$  of the excess CPI above 3%. Proposition H also provided for a refund of employee contributions to the pension system with 6% interest for an employee who terminated employment without retiring.

As of July 1, 1982, the effective date of Amendment H, there were 8,571 active members (firefighters and police) of the Article XVII and XVIII systems. Of these 5,309 (62 percent) had joined the system before the uncapped COLA was first provided in July of 1971; 2,743 (32 percent) had joined before 1967 when no cost of living benefit was allowed; and 2,566 (30 percent) joined between 1967 and 1971, when a cost of living adjustment capped at 2% was in place.

In general, the funding for these systems is provided by employee contributions, plus earnings thereon, and con-

tributions by the City from taxes levied and monies appropriated thereto by the City Council and Controller.

The City Charter sets out procedures for the Pension Board's Consulting Actuary using actuarial economic assumptions (e. g., future cost of living increases, salary increases and interest rates or yield on investment) and noneconomic assumptions (e. g., life expectancies of members and spouses and probability of retirement) to calculate and recommend to the Pension Board the annual City contributions necessary to pay all of the projected liabilities of each pension system over its entire life.

Before "Proposition 13" (Article XIII A of the California Constitution) was enacted by the voters of the State of California in 1978, the City Council simply voted a real property tax override for the amount of the City contribution recommended by the Actuary to the Pension Board. City Charter Sections 186.2 and 190.9 provide that the City Council or Controller annually *shall* levy a tax [no particular kind of tax is specified] in an amount sufficient to satisfy the City's contribution to the Pension Systems. [Emphasis added.] Since Proposition 13 became effective, the Council has not enacted any real property tax overrides.

Before 1959, contributions by the City to the Article XVII pension system were made on a "pay-as-you-go basis". The City contributed only that amount needed over and above employee contributions to pay the benefits actually paid and current system expenses in a given year. In 1959, this was changed to an "actuarially funded basis." The Actuary calculated the amount of annual contributions that would be needed if the liabilities were to be paid over a 50-year amortization period by the accumulation and investment of such contributions. In 1967, the 50-year amortization period was lengthened to

70 years as a result of Proposition P creating the Article XVIII system and granting a cost of living adjustment.

The unfunded liability is the difference between the present value of what each pension system is scheduled to pay to present and future beneficiaries and the present value of what the pension system expects to receive from City employer normal cost contributions, employee payroll contributions, and return on system assets through the life of the system.

In 1976, for the first time, the Actuaries recommended and the Pension Board adopted a new economic assumption, namely that salaries of active members would increase by a certain percentage each year. This long term salary increase assumption would have required an increase of over \$30 million in the City's 1977-78 contribution to the system. This in turn led the Pension Board to establish an amortization schedule based on annual contribution by the City of a constant percentage of payroll throughout the 70 year funding period, rather than an annual fixed dollar amount contribution to the Article XVIII system.

This change resulted in the short term, of much lower contributions by the City but toward the end of the funding period (the year 2036-37) payments will be much greater than under the old fixed dollar amount funding plan, leaving much of the debt to future generations. (See Exh. 44 for yearly projections of annual City contributions to pay for the unfunded liability projected to 2037, and comparison between the amounts required when the cost of living is uncapped and when the cost of living is capped at 3%, expressed in millions of dollars and percentage of total payroll salary.)

In 1976-77, the year of the funding change, the City's contribution to all *three* of the pension systems (Article XVII, XVIII and Article XXXV) was \$112,730,821, and by 1984-85 the actual City contribution was \$220,099,118.

From Exhibit 44 we see that, assuming Amendment H is valid and all pensions are capped for cost of living adjustments at 3%, that the normal cost for 1986-87 City contributions is \$102 million and payment on unfunded liability is an additional \$162 million and that it continues to rise to the year 2036-37 to approximately \$1.3 billion for the normal cost and \$1.8 billion payment on the unfunded liability. If there is *no* Cost of Living Cap (i.e., If Amendment H were invalid), the City's contributions, both for the normal cost and the unfunded liability, would be increased as reflected in Exhibit 44 and Exh. 44A.

Plaintiffs and defendant agree that \$43 million per year additional contribution to the unfunded liability would be required if the COLA is not capped. For 1986-87, this figure represents less than 1% of the City's total budget and less than 2% of the City's general budget (over \$2.3 billion) (Rptr. Tr. pp. 686-689).

In 1982, the total City Budget was \$1,414,588,025 and the total City contribution to the pension systems was \$233,545,649 or 16.5% of the budget.

The Actuarial economic assumptions adopted by the pension systems for the projections for City contributions to the year 2037 are; that inflation will rise at a rate of 5.5% per year; that salary increases for employed active members will rise at a rate of 6.5% per year; and that the yield on investments will be 8.5% (a projected City Budget for the year 2037 based on these actuarial assumptions was not presented by the evidence).

The stipulated facts (Rptr. Tr. Vol I, at pp. 26, 29, 48; Stipulation of Facts attached to Rptr. Tr. and end of Vol. I) demonstrate that for the years 1982 through 1986 the actual salary increases to members were 5.0%, 8.5%, 6.5%, 5.0%, and 5.0% respectively, whereas the actual cost of living per the CPI increase rose 9.1%, 0.5%, 4.7%, 4.6%, and 4.0%.

Assuming no capped COLA, the salary increases for active members would have been greater than cost of living increases for retired members, and except for the year 1982, in each successive year through 1986, the CPI rose less than the 5.5% assumed by the Actuaries.

## II.

### ISSUES AND CONTENTIONS

Plaintiffs contend that Amendment H capping the Cost of Living Adjustment to 3% and prorating those adjustments for the first year of retirement constitute a constitutionally impermissible impairment of vested contract rights by the City under both the State Constitution Article I § 9 and U.S. Constitution Article I § 10 Cl. 1 as to those members of the Article XVII and XVIII Pension Systems employed before July 1, 1982 and still active after July 1, 1982.

Defendants contend (generally) first, that Charter Amendment H does not impair vested contract rights because it operates prospectively and only imposes the 3% cap on COLA for pension benefits earned in the future after its effective date, i.e., the right to earn pension benefits in the future is not a vested right.

Secondly, that if Amendment H does impair vested contract rights it is not a substantial impairment. The terms of public employment have always been regulated

and there is no vested right to public employment. Defendant contends that the Amendment only restricts members to gains they reasonably expected. Some of the members joined the force before the COLA was uncapped. In 1971 when the 2% COLA limitation was uncapped, California case law (under *Houghton v. City of Long Beach* (1958) 164 Cal.App.2d 298) permitted unearned pension benefits to be unilaterally reduced, and hence changes reducing pension benefits were within the reasonable expectations of the parties and were impliedly incorporated in any pension "contract".

And finally, if Amendment H does constitute a substantial impairment of vested contract rights, it is constitutionally permissible as an exception under the inherent "police power" of the state. It was a reasonable and necessary response to a perceived fiscal crisis created by increasing and unpredictable pension costs and restricted means of raising revenues (in the wake of Proposition 13). Uncapped COLA benefits could be funded in future years only by reducing city services essential to the health, safety and welfare of city residents. It was also a necessary step to ensure the economic viability of the pension systems and to enable the City to continue to fund the pension systems.

The basic issues for decision by the Court are whether:

1. City Charter Amendment H constitutes "governmental" action which substantially impairs vested contract rights in violation of the contract clauses of the California and United States Constitutions.

2. If so, whether Amendment H constitutes governmental action which was reasonable and necessary to accomplish an important legitimate public purpose (a legally permissible exception to impair-

ment of vested contractual rights under the inherent "police" powers of the municipality).

### III.

#### DISCUSSION:

##### A. AMENDMENT H SUBSTANTIALLY IMPAIRS VESTED CONTRACT RIGHTS OF PLAINTIFFS.

The United States Constitution provides: "No state shall . . . pass any . . . law impairing the obligation of contracts. . . ." (Art. I, § 10, Cl. 1.)

The California Constitution contains the same prohibition: "A . . . law impairing the obligation of contracts may not be passed." (Art. I, § 9.)

The contract clauses of both state and federal constitutions have been the subject of judicial interpretation in numerous cases, but with respect to the precise issue and facts of the case before this court, *Pasadena Police Officers v. City of Pasadena* (1983) 147 Cal.App.3d 695 is directly in point and controlling on this aspect of the case.

By Charter Amendment, in June 1981, following an unfavorable fiscal experience, the City of Pasadena attempted, just as the City of Los Angeles did a year later, to limit the COLA to 2% on that portion of the pension earned after its effective date. Previously, since 1969, there had been no cap on the COLA and cost of living increases were granted in conformance with the CPI. Declaratory relief was granted in favor of the fire and police members of the retirement system. The Amendment was declared invalid as violative of vested contract rights. As to active members of the retirement system, the Court in the *Pasadena* case held (p. 701):

"It has long been the rule in California that a public employee pension constitutes an element of compensation and that the right to pension benefits vests upon the acceptance of employment even though the right to immediate payment of a full pension may not mature until certain conditions are satisfied. (*Miller v. State of California* (1977) 18 Cal.3d 808, 815; *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863; *Kern vs. City of Long Beach* (1947) 29 Cal.2d 848, 855; *Dryden v. Board of Pension Commissioners* (1936) 6 Cal.2d 575, 579.) Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity. (*Betts v. Board of Administration, supra*, 21 Cal.3d 859.) Very recently the Supreme Court has summarized this rule as follows: "By entering public service an employee obtains a vested contractual right to earn a pension on terms substantially equivalent to those then offered by the employer. [Citations.] On the employees' retirement after he has fulfilled pension conditions an immediate obligation arises to pay benefits earned. (*Carman v. Alvord* (1982) 31 Cal.3d 318, 325)."

The Court in the *Pasadena* case (p. 702) specifically rejected that City's contention, similarly urged by defendant City of Los Angeles in the present case, that as to active members the COLA cap provisions were prospective only because the right to an unlimited COLA was preserved on that portion of the pension which had already been earned by years of service prior to July 13, 1981. The Court stated that the Amendment capping the COLA was obviously disadvantageous to employees and limited the protection which had previously been offered by a pension fully adjustable to changes in the cost of living.

In 1978, the California Supreme Court had made it very clear that the right to earn pension benefits conferred by the public employer *during* the course of employment, as well as those benefits in effect when the employment commenced, constituted the measure of expectations of the employee in accepting as well as continuing employment. The right to earn those benefits is vested when conferred. *Betts v. Board of Administration* (1978) 21 Cal.3d 895, 866.

The very purpose of the Cost of Living Adjustment is to maintain the purchasing power of the pension against inflation. The actuarial assumption adopted by the City and the Pension System is that the cost of living will rise at a rate of 5.5% per year and that active employees will receive a 6.5% per year salary increase. On that assumption, if the pensioner retires at a fixed percentage of his highest salary while active, and is limited to a 3% COLA Cap, the purchasing power of his pension is declining at 2.5% per year.

One of the primary objectives in providing pensions for government employees is to induce competent persons to enter and remain in public employment. A pension is not just a gratuity. It is compensation for services previously rendered. In effect, pay is withheld to induce long continued employment. *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, pp. 852, 856.

As reflected in Exhibit 5-8, if we do assume the Actuary's economic assumptions for the life expectancy of the retiree and spouse, i.e., that salaries will increase 6.5% and that the cost of living will rise 5.5%, but that the COLA for retired members under Amendment H will be capped at 3% (for that proportion of pension benefits earned after 1982), we note from Exhibit 5 that the lost Service Pension Benefits for the life-expectancy for *each*

of five individual representative members (depending on years of service, entry date and percent of projected salary at age of retirement) range from \$239,940 to \$1,038,640, a significant loss per individual member. (Exh. 1; Pltf's. expert actuary Prien, Rptr. Tr. Vol. I, pp. 98-109.)

Judge John Cole in his pretrial order of November 8, 1985 granting a partial summary adjudication of issues, found to be without substantial controversy, that as of July 1, 1982 active members of the Article XVII and XVIII pension systems had (1) contract rights to receive annual cost of living adjustments to their pension equal to the percentage fluctuations in the cost of living during the foregoing year as determined by the Pension Board, and (2) the right to receive in their first cost of living adjustment, on July 1 in their first year of retirement, an amount equal to the full cost of living adjustment without regard to the date of retirement during that fiscal year.

The Court concludes, therefore, that the provisions of Amendment H which purport to CAP the previously uncapped COLA to 3%, and the "proration" provisions, constitute a substantial impairment by the City vested contractual rights of members of the Article XVII and XVIII pension systems.

**B. THE PROVISIONS OF AMENDMENT H CAP-  
PING THE COLA AND PROVIDING FOR PRO-  
RATION RESULT IN DISADVANTAGES TO  
EMPLOYEES AND ARE INVALID BECAUSE  
THEY ARE NOT ACCOMPANIED BY COMPA-  
RABLE NEW ADVANTAGES TO THOSE EM-  
PLOYEES AFFECTED.**

Although the California cases state that employees' vested contractual pension rights may be modified prior

to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system, the landmark case of *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131 placed strict limitations on the conditions which may modify the pension system in effect during employment. "Such modifications must be reasonable, and it is for the Courts to determine upon the facts of each case what constitutes a permissible change. To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." (Emphasis added.)

This principle has been strongly reaffirmed and emphasized.

*Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 447-448;

*Miller v. State of California* (1977) 18 Cal.3d 808, 816;

*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 864-865;

*Olson v. Cory* (1980) 27 Cal.3d 532, 534;

*Allen v. Board of Administration* (1983) 34 Cal.3d 114, 120;

*Pasadena Police Officers Assn v. City of Pasadena* (1983) 147 Cal.App.3d 695, 701.

The defendant argues that *Houghton v. City of Long Beach* (1958) 164 Cal.App.2d 298 should be followed rather than [sic] *Pasadena Police Offices v. City of Pasadena*, *supra*, a 1983 case, and that *Houghton* holds

that pension benefits to be earned through future years of service are not vested contractual rights and therefore can be freely modified without constitutional violation.

In any event, defendant argues that *Houghton*; *Palaske v. City of Long Beach* (1949) 93 Cal.App.2d 120; *Abion Allen v. City of Long Beach* (1950) 101 Cal.App.2d 15; and *Allstot v. City of Long Beach* (1951) 104 Cal.App.2d 441 all involving the same Long Beach Charter Amendment, were the law of California in 1971 when the COLA was uncapped by the City of Los Angeles, and in 1982 when the City of Los Angeles enacted Amendment H and attempted to cap the COLA at 3%. Therefore, defendants reason, that the right to modify future unearned pension benefits was part of plaintiff's "contract" with the City of Los Angeles and that the reasonable expectation of the members of the Los Angeles pension systems were that their pension rights to be earned after the effective date of Amendment H could be modified.

In the Long Beach *Palaske* and *Houghton* line of cases, the basic pension benefits for the first twenty years of service were not affected, only the additional benefits to be earned by serving more than twenty years after the "twenty year" pension had vested.

The Court in *Pasadena Police Officers v. City of Pasadena*, 147 Cal.App.3d 695, at pp. 704, 706 *supra*, discussed *Houghton* and *Palaske* and held that the *Houghton* and *Palaske* discussions should be confined to the particular Long Beach Charter provisions. It was *after* the *Palaske* decision in 1949, that the California Supreme Court in 1955 decided *Allen v. City of Long Beach*, 45 Cal.2d 128, 131 and announced the additional requirement "that damages in a pension plan which result in disadvantages to employees should be accompanied by *comparable new advantages*" [emphasis added]. This

holding has been reaffirmed by a number of cases cited above after *Houghton* was decided but before *Pasadena Police Officers*.

If the reasonable expectations of plaintiffs have any legal significance in this context, their reasonable expectations were that their pension benefits could not be diminished except by providing comparable new advantages.

In the *Pasadena* case, *supra* at p. 703, the Court expressly rejected defendant City's argument that the *Allen* case meant only that comparable new advantages must be provided when benefits already earned are modified retroactively, and applied the "comparable new advantages test" to prospective benefits.

*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 864-865 further defined and qualified the "comparable new advantage test". The new advantage must relate to the benefit which is diminished and it must focus on the particular employee whose benefits are diminished, not on other employees.

Under Amendment H, the Cost of Living Adjustment is limited to 3% for all active members of the Article XVII and XVIII Systems. The refundability provisions of Amendment H provide that employees who terminate employment would receive their contributions back with interest. (Prior to Amendment H, those employees who terminated employment without retiring, lost their contributions to the pension system.) This provision does not relate to nor offset the cost of living limitation and it does not affect the employees who will complete active service and retire. Amendment H does not provide comparable new advantages to the particular employees whose benefits are diminished.

C. THE 3% LIMITATION ON THE COST OF LIVING ADJUSTMENT AND PRORATION PROVISIONS OF AMENDMENT H, FOR ACTIVE MEMBERS OF THE RETIREMENT SYSTEM, ARE NOT JUSTIFIED BY AN EXERCISE OF THE INHERENT "POLICE POWER" AS REASONABLE AND NECESSARY TO AN IMPORTANT PUBLIC PURPOSE.

The City has failed to meet its burden of proving that the impairment of plaintiffs' rights are warranted by an emergency, and are reasonable and necessary to protect the basic interests of society.

Defendant City contends, somewhat ironically, that the reduction of pension benefits of police officers and firefighters is valid as an inherent exercise of the "police power" of the State.

They assert that, as an exception to the general rule that vested contract rights of public employees' pension benefits may not be impaired without providing comparable new advantages, the reduced benefits are justified. They contend that the City's burden under this exception is met by proving that:

1. The changes were reasonable and necessary to an important public purpose; namely,

- (a) The preservation of the financial soundness of the City;

- (b) The ability to predict and plan for long range City budgeting and financing;

- (c) To enable the City to continue providing essential public services; and

- (d) The preservation of the pension system itself.

*Pasadena Police Officers v. City of Pasadena* (1983) 147 Cal.App.3d 695, was not tried on the theory of fiscal emergency, i.e., that capping the COLA was necessary to meet City financial obligations or to save the Pension system and is not controlling on those issues in the case at bar.

Recognizing this, the Appellate Court in the *Pasadena* case at page 704 comments on the fiscal emergency justification as follows:

"Allen does state that changes may be made in the pension system to maintain its integrity. (*Allen v. City of Long Beach, supra*, 45 Cal.2d at p. 131.) A pension system in which benefits are payable only to the extent funded by specified contributions might be able to reduce benefits or increase employee contributions in order to save the system from bankruptcy. (*Houghton v. City of Long Beach* (1958) 164 Cal.App.2d 298, 304, 306). However, in the absence of a clear and unequivocal declaration in the pension provisions that benefits are payable only to the extent of available funds from specified contributions, the liability to pay promised pension benefits is a general obligation of the City. (*Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 348-352; *Carman v. Alvord*, 31 Cal.App.3d at pp. 332-333.) Suggestions of fiscal emergency have been rejected on the particular facts of several cases. (*Allen v. City of Long Beach, supra*, 45 Cal.2d at p. 133; *Abbott v. City of Los Angeles, supra*, 50 Cal.2d at p. 455; *Wisely v. City of San Diego, supra*, 188 Cal.App.2d 482, 487; *Frank v. Board of Administration* (1976) 56 Cal.App.3d 236, 246)."

There is no question that the cost of paying the benefits due and expenses of the pension systems in question here

is a general obligation of the City of Los Angeles. Under Section 190.09 (Section 190.09 of the Charter of the City of Los Angeles), the Pension Board is required to prepare and transmit the pension budget each year to the City Council and to include the annual payments as a percentage of payroll necessary to fund the system over an amortization period of 70 years (beginning in 1967-68) based on the actuarial assumptions, and the sums necessary to cover the cost of benefits and expenses of the system. Since 1967 Section 190.09 of the City Charter has expressly provided: "For the purpose of providing funds to meet the budget of . . . [the System] . . . the Council or the Controller annually *shall levy*, in addition to all other taxes levied by the City, a tax clearly sufficient to provide the total amount of all item in said [Pension System] budget." [Emphasis added.]

The California Supreme Court in *Olson v. Cory* (1980) 27 Cal.3d 532, 539, reexamined the factors warranting legislative impairment of vested contract rights (created by legislation) to an annual automatic cost of living increase in judicial pensions and salaries commensurate with the actual California Consumer Price Index. Legislation purporting to cap that cost of living adjustment was held an unconstitutional impairment of contractual rights during the term of office. Citing, *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 305-306, the California Supreme Court reiterated the four factors identified by the United States Supreme Court in *Home Building and Loan Assn. v. Blaisdell* (1934) 290 U.S. 398 justifying such impairment:

1. The enactment serves to protect basic interests of society.
2. There is an emergency justification for the enactment.

3. The enactment is appropriate for the emergency, and

4. The enactment is designed as a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment.

In applying these standards, the enactment's severity must be measured to determine "the height of the hurdle the state legislation must clear" (citing *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234. Therefore, the state's hurdle in applying the four factors is heightened because the attempt to cap the COLA is an impairment by the State affecting the heart of the employment contract. The defendants in *Olson v. Cory* offered no reason or justification and failed even to approach their burden of demonstrating that the impairment is warranted by an "emergency" serving to protect a basic interest of society (p. 539).

In *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, the state "bailout" money given to the County following Proposition 13 was conditioned on a salary freeze and no COLA, in violation of County contract with sheriffs and firefighters. The California Supreme Court rejected the "fiscal emergency" justification discussing *United States Trust Co. of New York vs. State of New Jersey* (1977) 431 U.S. 1.

In the *U.S. Trust Co.* case, the state's attempt to impair the security of Transit Authority Bonds based on the toll revenues was held invalid. The United States Supreme Court expressly recognized that a substantial impairment of contractual rights by state action is not unconstitutional if it is "reasonable and necessary to serve an important public purpose." In applying this standard,

however, the Court held that: "... complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the *state's self-interest* is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." (pp. 24-25.)

The salary limitation in *Sonoma* was declared (in an Urgency declaration) by the Legislature to be a fiscal emergency and was intended to alleviate the fiscal crisis created by Proposition 13 and to provide for maintaining essential services. The Legislature relied on the Legislative Analyst's report predicting that local entities would lose \$7 billion or a reduction of 57% in property tax revenues and would require a curtailment of essential services, and an estimated 270,000 local employees would have to be laid off. However, 5/7 of the revenues lost to local entities were replaced by state "bailout" monies, so the county had not sustained its burden of proving a fiscal emergency justification.

Significant to the case at bar the Court in *Sonoma* held (at p. 311) that, even so, the emergency may cease or the facts change. Even if the legislation is valid when passed, it is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends. The Court found the argument appealing (though did not decide the merits) that the passage of Proposition 13 was an action of the state. If there was an emergency, it was created by the state itself, and a state unconstitutionally impairs the obligation of its contracts if it limits its taxing powers so as to disable itself from fulfilling its obligations.

In *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 455, decided thirty years ago, the City of Los Angeles made the same arguments they are making in the case at bar. In *Abbott*, the City in trying to uphold a Charter Amendment changing rights of certain already retired pensioners from a fluctuating pension to a fixed one, argued that had the amendments not been made "the cost to the City and its taxpayers would have reached such staggering proportions that, in all probability, the system would have ceased to exist." The California Supreme Court soundly rejected that argument holding "this plea, based on speculation only, is without merit. Rising costs alone will not excuse the City from meeting its contractual obligations, the consideration for which has already been received by it. Moreover, it is not to be assumed that the City would have attempted to abolish its pension system by reason thereof, especially since such systems are almost universally essential in order to attract qualified employees to police and fire departments."

*California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494 presents a very similar public financial crisis in the wake of Proposition 13 reducing revenues. In that case, mandate was granted to compel a transfer of funds from the State General Fund to the teacher's retirement fund owing as a state contribution. The Court held (pp. 506-512) that the obligation to fund the retirement system was a continuing contract obligation of the state. When a promise to fund permanently is accepted by the employee by initial or continued employment, a contract is established. The fact that the amount saved could have significant impact in other areas of education with more pressing needs is not a purpose which justifies impairment. "If a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the contract

clause would provide no protection at all.” (Quoting *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, pp. 25-26). Thus, *California Teachers* and *United States Trust* rule out as permissible justification of a compelling interest for impairment, a legislative purpose to spend the obligated money for a purpose which is deemed a better expenditure.

*Valdez v. Cory* (1983) 139 Cal.App.3d 773, involved the same attempt by the State Legislature to refrain for 3 months from making the legislatively mandated employer contribution to the Public Employees Retirement System (PERS). A writ of mandate was issued to compel contribution. The Court held that the legislative action was a substantial impairment of contractual rights, and that employees have a vested interest in the integrity and source of funding for the payment of benefits which constituted a general obligation of the state. Citing the same four factors identified in *Olson v. Cory, supra*, which might justify impairment, the Court held that obviously the legislature’s suspension of employer contributions neither bears any material relation to the theory of a pension system and its successful operation nor carries out the “beneficent policy” of the pension laws. Although the cost-cutting measures [sic] furthers an important public interest there was no evidence that the Legislature gave considered thought to the effect on PERS or the possibility of less drastic means of accomplishing its goal. In addition, the Court held, there was no intent merely to defer the employer contributions for a brief period. The suspended contributions were irretrievably lost. Finally, the fact that the spending power of the Legislature is limited by Proposition 13, does not furnish the necessary justification for unconstitutionally impairing governmental contracts.

Nearly all of the evidence presented to this Court during 9 days of trial with 15 witnesses and 186 exhibits, was introduced on the issue of whether Amendment H was reasonable and necessary to an important public purpose which would justify the permanent and substantial impairment of the vested contractual rights of the active members of the Article XVII and Article XVIII pension system.

No California case has been cited to the Court which has upheld such a justification. Arguably, the California cases which discuss the legal standard were tried with limited evidence on that point. In the *Pasadena Police Officers* case, *supra*, the trial judge apparently excluded any such evidence. In *Sonoma County*, *supra*, "fiscal emergency" resulting from Proposition 13 was raised and argued but the Court found that there was no fiscal emergency because the Legislature had provided "bailout funds" to avert the emergency.

*Valdez v. Cory* and *California State Teachers Assn. v. Cory* come closer to the case at bar in rejecting a claimed justification of "reasonable and necessary to a public purpose". The legislative declaration of emergency attempting to justify the state's withholding contributions to the retirement system relied on the Legislative Analyst's report of dire financial predictions in the wake of Proposition 13. The Governor had pointed out that the amount saved could have an immediate and significant impact in other areas of education with more pressing needs.

Defendant urges that the case in point factually which should be applied and followed in the instant case is a federal district case, *Maryland State Teachers Association, Inc. v. Hughes* (D.Md. 1984) 594 F. Supp. 1353, affirmed No. 84-2213 (4th Cir. Dec. 5, 1985). In 1984, the Mary-

land legislature enacted a "Pension Reform Law" capping the Cost of Living Adjustment for future pension benefits which had previously been uncapped. The record in the Maryland case evidenced experience similar to that of the City of Los Angeles; funding for the pension system was difficult; inflation was unpredictable and had risen more rapidly than expected; actuarial experience was adverse; the unfunded liability of the system had increased, all of which had led to a substantial instability in the State fiscal planning process.

The real basis for the decision in the *Maryland* case, upholding the COLA cap, was that the right to earn pension benefits for future years of service is not a vested contractual right. Under the laws of Maryland, Maryland had reserved the right to modify prospective benefits and therefore the state may modify those unearned benefits without violating the contract clause of the United States Constitution. *This is contrary to California law.* The District Court in *Maryland*, perhaps as an alternative ground but more likely by way of dicta stated that even assuming there was an impairment of vested contract rights, the legislation was reasonable and necessary to prevent severe imbalance in future state budgets. *Maryland* did not discuss whether alternative means of solving the fiscal problems had been explored.

In *Continental Illinois National Bank and Trust Co. of Chicago v. The State of Washington* (1983) 696 Fed.2d 692 (U.S. Ct. of App., Ninth Cir.), a Washington State Energy Financing Voter Approval Act was held invalid as a substantial impairment of contractual obligation of the Washington Public Power Supply System. The invalid act was enacted in response to large cost overruns at nuclear power plants. It provided that the public agency may not issue or sell bonds to finance any public energy project

unless it had first obtained authority for the expenditure of the funds raised by the sale of the bonds at an election in accordance with the initiative.

In examining the claimed justification that the impairment was reasonable and necessary to achieve valid state interests in ensuring public accountability and protecting the state's financing by placing controls on the Public Power System's spending because the project had become too expensive, the Court found that *while a limitation of public spending is a legitimate state goal, its weight is diminished in contract clause analysis when the state limits its own previous financial commitments*. The act was held not reasonable or necessary.

The evidence in the case at bar establishes that: At the time of the enactment of Amendment H, the police and fire pension systems had unfunded liabilities of \$3.37 billion in present value, and were being funded over a 70 year period ending in 2037 (Exh. 145, Exh. 127 at 7). This was caused by the administration of the Article XVII and XVIII pension systems from their very inception. Defense actuary expert Smith makes clear that the following acts and omissions did not conform to sound and responsible pension funding practice and were a principal cause of the system's financial problems (Rptr. Vol. IV, pp. 463-464, 482-484, 494-496):

A. The funding of the Article XVII system on a "pay-as-you-go" basis from 1923 until 1959. (Stipulated Facts\* ¶ 37. Rptr. Tr. Vol. 3, p. 306.)

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\*The written Stipulated Facts on file are attached to Volume I of Reporter's Transcript as an Exhibit, pursuant to oral agreement on the record.

B. The establishment in 1967 of a 70 year amortization period for Article XVII and XVIII Systems. (Stipulated Facts ¶ 38; Rptr. Tr. Vol. IV, p. 463.)

C. The commencement of the Article XVIII pension system with an actuarially unfunded liability of \$258 million as of July 1, 1967 (City Charter § 190.09(2)).

D. The failure of the Pension Board over many years to assume realistic projections of annual increases in the Consumer Price Index. (Stip. Facts ¶ 42; Rptr. Tr. Vol. III, pp. 353, 356.)

E. The failure of the Pension Board, at any time before 1976, to consider any salary increase of active members in its annual valuation of the systems. (Stip. Facts ¶ 43; Rptr. Tr. Vol. III, p. 356; Vol. IV, pp. 482, 483-484; Vol. V, p. 585.)

F. The failure of the Pension Board, commencing in 1976, to make realistic assumptions as to salary increases which would be granted to active members (Stip. Facts ¶ 45), and

G. The decision in 1976 to change the City contributions to the system from a level dollar amount to a percentage of payroll. (Stip. Facts ¶ 44; Rptr. Tr. Vol. IV, pp. 486-487; Vol. V, p. 586.)

In contrast, as of June 1985, the Article XXXV Safety Members Pension System, established in 1980 for all new members joining the force on or after December 1, 1980 (as of today there are about 3,000 members of the Article XXXV System, Hutchison Testimony, Rptr. Tr. Vol. II, p. 245), showed the unfunded actuarial liability "in the black" by \$4,762,759.

Defendants argue that no one could be expected to foresee the rate of inflation nor the passage of Proposition 13 and that the costs of the pension benefits exceeded their expectations. No California case has accepted these arguments to justify impairment of public employee benefit contracts.

In 1971, before the COLA was uncapped, the then Chief Administrative Officer Piper pointed out the risk of unpredictability in uncapping the COLA and recommended a 3% cap (Exh. 159). Councilman Braude Agreed that they had been so advised but testified that they didn't want to bother negotiating every year. The City Council was willing to and did assume that risk. Mayor Bradley thought in 1971 that they could later uncap the COLA if necessary. They failed to include that express reservation in the 1971 Charter Amendment uncapping the COLA.

By 1982, the recommended contribution by the City to the pension systems was \$227 million.

If Amendment H is not valid, i.e., if the COLA remains uncapped, both plaintiffs and defendants agree that an *additional \$43 million* per year would be recommended to be contributed by the City to the Article XVII and XVIII systems on the unfunded liability, if the actuarial assumptions are correct. (Rptr. Tr. Marnell, Vol. III, pp. 304, 307.)

This \$43 million is less than 1% of the City's total budget and less than 2% of the City's general budget for 1986-87 (CAO Comrie, Rptr. Vol. V, pp. 686-687).

Obviously this sum will represent a diminishing percentage as those budgets inevitably increase in the future and will be paid with inflated dollars having diminished value.

From 1975 to 1982 numerous committees and reports, including ad hoc committees, City Council's Committee on Revenue and Finance, Blue Ribbon committees, Town Hall committee; the State Controller's report for 1979; and the Chief Administrative Officer's report had studied and recommended action to reduce long-range growth of pension costs (Exhs. 55, 56, 58, 59, 63, 70, 77, Exh. 133).

Proposition 13 and reduction in federal revenue sharing had caused the City to reduce the City payroll by 6,000 positions (or about 20%) from 1978 to 1982; librarians and recreation centers were put on a half-time basis; street cleaning services, road repairs and maintenance of city vehicles were reduced.

Proposition 13 had eliminated the City's property override tax which was an easy and convenient way of raising revenue for the pension systems.

In the year 1980 active members received salary increases of only 9-10% and retired members received a COLA of 17.7% (Stip. Facts ¶42, Rptr. Tr. pp. 768, 913, 915) which created morale problems with the active members.

In contrast, however, in 1983, the CPI increase was only 0.5% whereas the active members received two increases in that year of 2% and 6.5%. In 1984 salary was increased again by 6.5% and the CPI increase was only 4.7%, in 1985 salaries increased 5% and the CPI by 4.6% and in 1986 salaries increased 5% and the CPI by 4%. For the last 4 years the purchasing power of the pension has fallen, if capped at 3%, and has not kept up with the CPI. In the three years preceding 1980, salary increases for active members also exceeded the COLA's reflecting the CPI. (Stip. Facts ¶42, 45.)

Moreover, the actuarial assumptions recommended by the actuary and accepted by the Pension Board are that salary increases will continue to grow by 6.5% while the CPI and COLA's reflecting it will grow by only 5.5%.

Chief Administrative Officer Comrie, Mayor Bradley and Councilman Yaroslavsky were concerned that escalating pension costs would endanger the pension systems. (Rptr. Tr. Vol. 5, pp. 579-80, Vol. 8, p. 976.) Part of the danger to the pension system is the "threat" of the Council to withhold actuarially recommended funding in the future. (Rptr. Tr. Vol. III, p. 924, Vol. V, pp. 664, 669, 692, Vol. VI, p. 778.) In 1981 the Council held back \$22 million from contributions to the pension system in reserve. (Exh. 113.)

Defendant contends that the important public purposes served by Amendment H were:

1. To preserve the integrity and soundness of the pension systems — to insure funding for the systems and that benefits would be paid;
2. To solve unpredictability in recommended City contributions that make long term budgeting difficult;
3. To avoid making cuts in essential public services; and
4. To maintain popular support for public pensions.

Mayor Bradley, Councilmen Yaroslavsky and Braude, and the Chief Administrative Officer were of the opinion that Amendment H was reasonable and necessary to achieve these purposes.

This Court does not question the fact that our elected public officials had and have legitimate and serious con-

cerns for fiscal management, nor does it question the motives of the Mayor and City Council in placing Amendment H on the ballot and urging its passage by the voters. The Court accepts the fact that in the opinion of the City Officials it was done for important public purposes.

What the court must decide on the evidence under established case law interpreting the State and Federal Constitutions however, is whether Amendment H was a reasonable and necessary means such as to justify a substantial impairment of vested contractual rights of the members of the Article XVII and XVIII pension systems, all of whom were active employees with certain pension expectations before Amendment H was enacted.

This Court does not substitute its own political judgment for that of elected city officials and staff. It is unfortunate that pensions for public employees do not enjoy great popularity as compared with other interests and needs competing for City revenues. It is not an easy political decision for elected public officials to decide whether to raise taxes, cut pension benefits, build metro-rails, spend more to provide for the homeless, or how to collect and apportion the spending of City revenues among the myriad worthy demands and competing interests.

It is not up to the Court to decide how the City can or should raise revenues or to pass judgment on how the City orders its spending and budget priorities. Obviously it is not popular to increase taxes.

C.A.O. Comrie and Councilman Braude speculate that the City Council might have cut essential City services to fund the annual contributions to the pension systems had Amendment H not been enacted, and might do it in the

future if Amendment H is invalid (Rptr. Vol. V, pp. 640, 642, 664-665, Vol. VI, p. 778 and Exh. 103).

Defendants have not convinced the Court that this was or would be the only course open to the City. The closing of those Article XVII and XVIII pension systems to new members and the establishment of the new Article XXXV system with a capped COLA, for all officers joining the forces after December 1, 1980, was a reasonable and lawful means to help achieve those purposes.

The evidence does not demonstrate that the City was unable to raise additional revenues, or unable at any time in 1981, 1982, or thereafter to meet its financial obligations. The evidence is not convincing that there existed such a financial emergency or grave fiscal crisis which made it impossible for the City to meet its obligation to the pension systems.

In 1983-84 when there was a prospective City General Budget short fall of approximately \$142 million the City imposed new taxes and fees totaling \$120-\$130 million and has continued those increased taxes and fees in effect to date (Comrie, Rptr. Tr., Vol. VI, pp. 717-18; Bradley, Vol. VIII, p. 986).

The evidence shows that the City budget each fiscal year beginning with the year 1976-77 and ending with fiscal year 1985-86, ended each fiscal year with unexpended funds in amounts ranging up to \$70 million (Comrie, Rptr. Tr., Vol. VI, pp. 702-03, 705). Since 1981-82 the City's general budget has increased by 10% or more each year. The general budget for 1986-87 is almost \$1 billion more than it was in 1981-82 (Comrie, Rptr. Tr., Vol. VI, pp. 700-01, Exh. 160).

The City has a duty to levy a tax in addition to all other taxes, sufficient to finance the pension system. The obliga-

tion to pay pension benefits and expenses of the system is a general obligation of the City (City Charter §§ 186.2 and 190.09).

Defendants have not carried their burden of proving that the City is unable to impose any additional taxes, increase existing taxes, or unable to reorder its spending priorities.

The decision to try to avoid raising taxes and to spend for other important public purposes, the money which would otherwise be contributed by the City to the pension systems for the difference between the capped and uncapped COLA benefits may make good "political" sense, but is not justified under the "Contract Clauses" of the United States and California Constitutions.

The defendants have not convinced this Court that the fiscal picture for Los Angeles is even as bleak today as it was in 1981-1982 when Amendment H was debated and enacted. Certainly inflation has slowed and revenues and budgets have increased. Nor have defendants convinced the Court that the future looks bleaker.

A great number of exhibits, and expert witness economists and actuaries were produced by defense in an attempt to predict a dire financial future for the City of Los Angeles characterized as a mature declining city, with business flight, loss of tax basis, and an increase in poor population contributing little and requiring vast increases in social welfare and related expenditures. Apparently they lack confidence that "L.A.'s the Place." In contrast, plaintiffs' experts point out that the Los Angeles experience differs from the past experience of older eastern cities relied on by defense, in that the Los Angeles infrastructure is newer, the people immigrating to Los Angeles tend to be younger, more educated and produc-

tive, and that Los Angeles has and will continue to have a much lower population density than those eastern cities.

Without attempting to detail that evidence, the Court finds the assumptions made to draw those conclusions are sheer speculation and guesswork.

Some of the economic actuarial assumptions on which the projected funding to the year 2037 for the pension is based, such as that salaries will increase at 6.5% per year, that the CPI will rise at 5.5% per year and that the annual yield on investments will be 8.5% per year also fall into that category. For any given year for those figures to be proven accurate would be just coincidence. They have not been proven correct historically for any given year even in the last decade.

#### IV.

#### CONCLUSION:

The evidence in this case in the context of the persuasive case law authority interpreting the Contracts Clauses of the State and Federal Constitutions compels this Court to conclude that:

1. That the right to earn pension benefits provided by the City Charter Amendment 2 (effective July 1, 1971), with an uncapped COLA, for those members who commenced employment prior to December 1, 1980, are vested contractual rights subject to the contract clauses of the United States (U.S. Constitution Art. I Section 10 Cl. 1) and California (California Constitution Art. I Section 9).

2. That both the proration and the 3% cap on the COLA provisions of Amendment H substantially impair vested contractual rights of those members of Article

XVII and XVIII pension systems who were not retired prior to July 1, 1982.

3. Charter Amendment H does not bear a material relation to the theory of the pension systems and its successful operation.

4. Changes in the pension system under Amendment H, namely the 3% cap on COLA, and the proration provision result in disadvantages to the numbers of the system and are not accompanied by comparable new advantages. The refund provisions do not relate to the benefit diminished and do not provide any advantage to employees who will retire rather than terminate employment prior to retirement.

5. Amendment H was not reasonable and necessary to an important public purpose.

(a) The purposes for which Amendment H were enacted were important public purposes;

(b) The defendants have not sustained their burden of proving that the impairment of vested contractual rights of plaintiff to earn pension benefits according to the City Charter provisions in effect before Amendment H was enacted, was reasonable and necessary to achieve those important public purposes;

(c) There was no emergency, or fiscal crisis, justification for the enactment. At no time pertinent herein has the City been unable to meet its financial obligations. The enactment was not necessary to solve the perceived fiscal crisis;

(d) Defendants have not sustained their burden of proving that there were no reasonable alternative—

methods available for raising revenues or for solving budgetary problems of the City;

(e) From the time Amendment H was enacted in 1982, the City has failed to contribute the \$43 million recommended by the actuaries to fund that part of the City's contribution attributable to the uncapped COLA. At the same time the general City Budget, and taxes and revenues have increased. The City has either spent the \$43 million for other purposes deemed more important, or maintained it as part of the general reserve fund.

6. The enactment was not designed as a temporary measure, rather vested contract rights were permanently lost.

7. The fiscal difficulties experienced by defendants with regard to the pension systems were in part a result of the administration of the systems during prior years and caused by actions of the Council and Pension Board.

8. Proposition 13, limiting the ability of the City to raise revenue from real property tax overrides constituted state action.

9. The obligation to pay the expenses of and benefits due under the pension system is a general obligation of the City.

10. The City is mandated by its own Charter to impose taxes to meet the budget of the Article XVIII pension system.

**THEREFORE IT IS ADJUDGED AND DECLARED THAT:**

Los Angeles City Charter § 184.96 and § 190.143 Subsections (A)(1), (A)(2) and (A)(4) imposing a 3% limitation on cost of living adjustments to a portion of the

pension benefits under Article XVII and XVIII are invalid and unenforceable because each of them is a law impairing the obligation of contract within the meaning of Article 1 Section 9 of the Constitution of the State of California and Article 1 Section 10, Clause 1 of the Constitution of the United States.

Los Angeles City Charter § 184.96 and § 190.143, subsections (A)(3) providing for a proration method of calculating cost of living adjustment for the first year of retirement for Article XVII and XVIII pension systems are invalid and unenforceable because each of them is a law impairing the obligation of contract within the meaning of Article I Section 9 of the Constitution of the State of California and Article I Section 10, Clause 1 of the Constitution of the United States.

Dated: March 6, 1986.

BONNIE LEE MARTIN

BONNIE LEE MARTIN  
Judge of the Superior Court



## **APPENDIX E**

APPENDIX

JOHN R. McDONOUGH  
J. STEVEN GREENFELD  
HARLEE M. GASMER  
BALL, HUNT, HART, BROWN & BAERWITZ  
4525 Wilshire Boulevard, Third Floor  
Los Angeles, California 90010-3886  
(213) 937-8999

LESTER G. OSTROV  
FOGEL, ROTHSCHILD, FELDMAN & OSTROV  
5900 Wilshire Boulevard, Suite 2600  
Los Angeles, California 90036  
(213) 937-6250  
Attorneys for Plaintiffs

SUPERIOR COURT OF  
THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

UNITED FIREFIGHTERS OF LOS ANGELES, CITY, et al.,  
*Plaintiffs,*

VS.

CITY OF LOS ANGELES, et al.,  
*Defendants.*

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LOS ANGELES POLICE PROTECTIVE LEAGUE, et al.,  
*Plaintiffs,*

VS.

CITY OF LOS ANGELES, et al.,  
*Defendants.*

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*Case No. C 413 752 Consolidated with*  
*Case No. C 418 547*

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**PROPOSED JUDGMENT**

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Dept: 15  
Date: April 1, 1987  
Time: 9:00 A.M.

These consolidated actions came on for trial in Department 15 of the Superior Court of the State of California in and for the County of Los Angeles, the Honorable Bonnie Lee Martin presiding, on February 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1987. Plaintiffs in action No. C 413 752 were represented by Lester G. Ostrov of the law firm of Fogel, Rothschild, Feldman & Ostrov; plaintiffs in action No. C 418 547 were represented by John R. McDonough, J. Steven Greenfeld and Harlee M. Gasmer of the law firm of Ball, Hunt, Hart, Brown and Baerwitz; and defendants in both actions were represented by John F. Daum, Holly E. Kendig and Gary R. Clouse of the law firm of O'Melveny & Myers. The Court, having considered testimony and documentary evidence and the written and oral arguments of counsel and being fully informed in the matter, it is hereby

ORDERED, ADJUDGED, DECREED AND DECLARED that:

1. Los Angeles City Charter § 184.96 and § 190.143 Subsections (A)(1), (A)(2) and (A)(4) imposing a 3% limitation on cost of living adjustments to a portion of the pension benefits under Article XVII and XVIII are invalid and unenforceable because each of them is a law impairing the obligation of contract within the meaning of Article 1 Section 9 of the Constitution of the State of California and Article 1 Section 10, Clause 1 of the Constitution of the United States.

2. Los Angeles City Charter § 184.96 and § 190.143 subsections (A)(3) providing for a proration method of calculating cost of living adjustment for the first year of retirement for Article XVII and XVIII pension systems are invalid and unenforceable because each of them is a law impairing the obligation of contract within the meaning of Article I Section 9 of the Constitution of the State

of California and Article I Section 10, Clause 1 of the Constitution of the United States.

3. Plaintiff in Case No. C 431 752 United Firefighters of Los Angeles City, Local 112, IAAF, AFL-CIO, shall receive from defendants and each of them costs of suit in the amount of \$

4. Plaintiffs in Case No. C 418 547 Los Angeles Police Protective League, Ronald Dean Gray, David Baca, Jr., Gregory Paul Dust, Bill G. McDaniel and Fred A. Tredy shall receive from defendants and each of them costs of suit in the amount of \$

DATED: April 2, 1987.

BONNIE LEE MARTIN

BONNIE LEE MARTIN

Judge of the Superior Court



## **APPENDIX F**

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JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant City Attorney  
City Hall East  
Los Angeles, California 90012  
(213) 485-5403

and

O'MELVENY & MYERS  
JOHN F. DAUM  
KAREN R. GROWDON  
400 South Hope Street  
Los Angeles, California 90071  
(213) 669-6000  
Attorneys for Defendants

SUPERIOR COURT OF  
THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

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UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
*Plaintiff,*

vs.

CITY OF LOS ANGELES, et al.,  
*Defendants.*

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LOS ANGELES POLICE PROTECTIVE LEAGUE, et al.,  
*Plaintiffs,*

vs.

CITY OF LOS ANGELES, et al.,  
*Defendants.*

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Case No. C 413 752 Consolidated with  
Case No. C 418 547

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ORDER DENYING PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND SPECIFYING  
ISSUES WITHOUT SUBSTANTIAL CONTROVERSY

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Hearing Date: May 30, 1985, Dept. 86

Plaintiffs' joint motion for summary judgment or for an order specifying issues without substantial controversy in these consolidated cases came on regularly for hearing on May 30, 1985, before this Court in Department 86, the Honorable John L. Cole presiding, with John R. McDonough of Ball, Hunt, Hart, Brown and Baerwitz and Lester G. Ostrov of Fogel, Rothschild, Feldman & Ostrov appearing on behalf of plaintiffs, and with John F. Daum of O'Melveny & Myers appearing on behalf of defendants City of Los Angeles and Board of Pension Commissioners of the City of Los Angeles.

After full consideration of the evidence, memoranda of points and authorities and separate statements of disputed or undisputed facts submitted by all parties, and after full consideration of the oral arguments of counsel, it appears and the Court finds that there are triable issues at least as to the following material issues raised by plaintiffs' motion for summary judgment, which list is set forth below pursuant to Section 437c(g) of the Code of Civil Procedure, as shown by the evidence listed parenthetically:

- (1) Whether Charter Amendment H was reasonable and necessary to serve, protect, preserve or achieve one or more important public purposes of the City of Los Angeles, including: the long-term actuarial soundness of the Article XVII and Article XVIII pension systems; the long-term financial and economic health of the City of Los Angeles; the ability of the City of Los Angeles to provide public services essential to the protection of public health, safety and welfare; the maintenance of the City's credit rating and its ability to raise needed funds in the bond markets; fairness and social justice among and between Los Angeles residents, present and future Los

Angeles employees and older and younger members of said pension systems; and public trust and confidence in Los Angeles police and fire officers. (Bradley Declaration ¶¶ 7-10; Braude Declaration ¶¶ 7-11; Yaroslavsky Declaration ¶¶ 6-11; Russell Declaration ¶¶ 7-12; Comrie Declaration ¶¶ 2, 47-75 and the exhibits referenced therein and filed therewith; and Avrin Declaration ¶¶ 3-9.)

(2) Whether Charter Amendment H substantially impaired a contractual obligation between Los Angeles and its safety employees, given the expectations of the parties and the state of the law at the time the cost-of-living adjustment ("COLA") pension benefit was uncapped in 1971. (Comrie Declaration ¶¶ 10-12, 21, 22, 33, 34, 52, 54, 57, 62, 63, 75 and the exhibits referenced therein and filed therewith; Braude Declaration ¶¶ 8-10; and Russell Declaration ¶¶ 8-12.)

(3) Whether any impairment of vested rights caused by Charter Amendment H was constitutional, valid and enforceable because the three percent COLA cap of the 1982 initiative was in accordance with the reasonable expectations of members of the Article XVII and Article XVIII pension systems as of the time of the enactment of the uncapped COLA provision in 1971. (Comrie Declaration ¶¶ 17-20, 30, 33, 38-41, 54, 57, 62, 63, 69-75 and the exhibits referenced therein and filed therewith.)

(4) Whether the value of the refundability option given to members of the pension systems by Charter Amendment H outweighs the limitation on the COLA benefits under realistic future long-term economic scenarios. (Smith Declaration ¶¶ 3-7.)

Plaintiffs' motion for summary adjudication of issues is granted as to the following issues only which issues the Court finds to be without substantial controversy:

1. The individual plaintiffs in this action are members of the Los Angeles Police Department and their pension rights are governed by Article XVIII of the Los Angeles City Charter ("the Article XVIII pension system"). The pension rights of many other Los Angeles police officers and firefighters are also governed by the Article XVIII pension system. The pension rights of other Los Angeles police officers and firefighters are governed by Article XVII of the Los Angeles City Charter ("the Article XVII pension system").

2. All of the five individual plaintiffs in this action and many other members of the Article XVII and Article XVIII pension systems were in active service with the Los Angeles Police Department on or after July 1, 1982 and had been in active service for at least some period of time between July 1, 1971 and July 1, 1982.

3. From July 1, 1971 until July 1, 1982, the Article XVII and Article XVIII pension systems each provided, as more fully set out in Articles XVII and XVIII of the Los Angeles City Charter, that members would receive annual adjustments in the amount of their pensions equal to the percentage fluctuations in the cost-of-living during the foregoing year, as determined by defendant Board of Pension Commissioners.

4. Effective July 1, 1982, Sections 184.96 and 190.143 were added to the Los Angeles City Charter. The effect of these sections, as more fully set out therein, was to impose a 3% limitation on annual cost-of-living adjustments to a portion of the pension benefits of those members of the Article XVII and Article XVIII pension

systems who were in active service after June 30, 1982 and who subsequently retire and are awarded pension benefits.

5. From July 1, 1971 until July 1, 1982, the Article XVII and Article XVIII pension systems each provided, as more fully set forth in Articles XVII and XVIII of the Los Angeles City Charter, that members would receive, as part of the first cost-of-living adjustment to their pensions, an adjustment equal to the full cost-of-living fluctuation during the foregoing year, as determined by defendant Board of Pension Commissioners, without regard to when during his last year of service a member retired.

6. Effective July 1, 1982, §§ 184.96A(3) and 190.143(a)(3) were added to the Los Angeles City Charter. These sections, as more fully set forth therein, provided that the first cost-of-living adjustment thereafter made to the pension benefits of members of the Article XVII and Article XVIII pension systems would be equal only to  $\frac{1}{12}$  of the applicable cost-of-living adjustment, multiplied by the number of months of the pension year (July 1-June 30) which had elapsed since the effective date of retirement.

7. Effective July 1, 1982, amendments to the Los Angeles City Charter became effective which gave members of the Article XVII and Article XVIII pension systems in active service on or after that date the option to receive a refund of their accumulated contributions to those pension system funds, together with interest, upon termination of employment other than by retirement. A member who so terminated his employment and who received a refund of contributions was not entitled thereafter to receive pension benefits.

8. As of July 1, 1982, members of the Article XVII and XVIII pension systems had contract rights to the benefits described in paragraphs 3 and 5 above.

Plaintiffs' Motion for Summary Adjudication of Issues is denied as to the remainder of the issues set out in Plaintiffs' Statement of Undisputed Issues of Material Fact. The Court finds that there are triable issues of material fact as to whether plaintiffs' contract rights were materially diminished and as to the value of the refundability option. The conflicting evidence on these points is set out in the Declarations of Barthus J. Prien, filed by plaintiffs, and the Declaration of William Smith, filed by defendants.

Any final judgment to be entered in these consolidated proceedings shall, pursuant to § 437c(j) of the Code of Civil Procedure, award judgment in accordance with the issues hereinabove found to be without substantial controversy.

The Court's order of June 6, 1983, granting defendants' motion for summary judgment and denying plaintiffs' motion for summary judgment, which order was based on *Houghton v. City of Long Beach*, 164 Cal.App.2d 298 (1958), is vacated.

DATED: November 8, 1985.

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HON. JOHN L. COLE

Hon. JOHN L. COLE  
Judge of the Superior Court

## **APPENDIX G**

THE FIRST OF THESE IS THE FACT THAT THE  
COUNTRY HAS BEEN FOR SOME TIME  
IN A STATE OF DEPRESSION AND UNREST.

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THE TWELFTH IS THE FACT THAT THE  
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IN A STATE OF DEPRESSION AND UNREST.

THE THIRTEENTH IS THE FACT THAT THE  
COUNTRY HAS BEEN FOR SOME TIME  
IN A STATE OF DEPRESSION AND UNREST.

SUPERIOR COURT OF  
THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
*Plaintiff,*

VS.

CITY OF LOS ANGELES, et al.,  
*Defendants.*

---

LOS ANGELES POLICE PROTECTIVE LEAGUE, et al.,  
*Plaintiffs,*

VS.

CITY OF LOS ANGELES,  
*Defendants.*

---

Case No. C 413 752 Consolidated with  
Case No. C 418 547

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**ORDER ADJUDICATING ISSUES AS BEING  
WITHOUT SUBSTANTIAL CONTROVERSY AND  
RULING ON OTHER PENDING MOTIONS**

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WHEREAS, plaintiffs in Case No. C 418 547 moved on March 1, 1983, for summary judgment or, in the alternative, for an order adjudicating certain issues as being without substantial controversy and established in favor of said plaintiffs and against defendants; and

WHEREAS, plaintiff in Case No. 413 752 moved on March 4, 1983, for summary judgment, or in the alternative for an order adjudicating certain issues as being without substantial controversy and established in favor of said plaintiff and against defendants and

WHEREAS, on May 4, 1983, defendants moved for an order adjudicating that certain issues are without substantial controversy and established in favor of defendants against plaintiffs; and

WHEREAS, on May 4, 1983, defendants moved for an order that, in the event plaintiffs seek to litigate the validity of § 184.96(A) (3) and/or § 190.143(a) (3) of the Los Angeles City Charter, plaintiffs be required to join as necessary parties to this action all active members of the pension systems created by Articles XVII and XVIII of the Los Angeles City Charter; and

WHEREAS, the Court has read and considered the extensive memoranda of points and authorities, declarations, and exhibits submitted by the parties in support of and in opposition to said motions, and heard and considered the arguments of counsel; and

WHEREAS, said motions duly came on for hearing on June 3, 1983, in Department 88 of the above-captioned Court; and good cause appearing therefor,

IT IS ORDERED as follows:

1. Plaintiffs' motions for summary judgment are denied.

2. Plaintiffs' motions, in the alternative, for orders adjudicating certain issues as being without substantial controversy and established in their favor are denied.

3. To the extent plaintiffs' motions may be construed as seeking an order adjudicating in their favor the issues of whether § 184.96(A) (3) and/or § 190.140(A) (3) of the Los Angeles City Charter are valid and constitutional (which issues the parties' papers refer to as the "proration issues"), the motions are denied on the ground that there are triable issues of fact as to those issues.

4. Defendants' motion for an order adjudicating issues is granted. The Court finds, as all parties agree, that there is no triable issue of fact as to the issues specified in defendants' motion and that those issues are without substantial controversy. The Court rules that defendants are entitled to a judgment as a matter of law that:

(a) California law does not prohibit a public employer from modifying pension benefits attributable to services not yet rendered; and that

(b) Sections 184.96(A)(1)-(2), 184.96(A)(4), 190.143(A)(1)-(2), and 190.143(A)(4) of the Charter of the City of Los Angeles, which were adopted by the voters on June 8, 1982, as part of Charter Amendment H, involve modifications only of pension benefits attributable to services not rendered as of the effective date of the amendment, do not infringe any vested pension right of plaintiff or their members, and are constitutional, valid, and enforceable according to their terms.

Any final judgment to be entered in these cases shall, pursuant to § 437c subd(i) of the Code of Civil Procedure, award judgment in accordance with the foregoing.

5. Defendants' motion to require joinder is denied.

DATED: June 6, 1983.

JOHN L. COLE

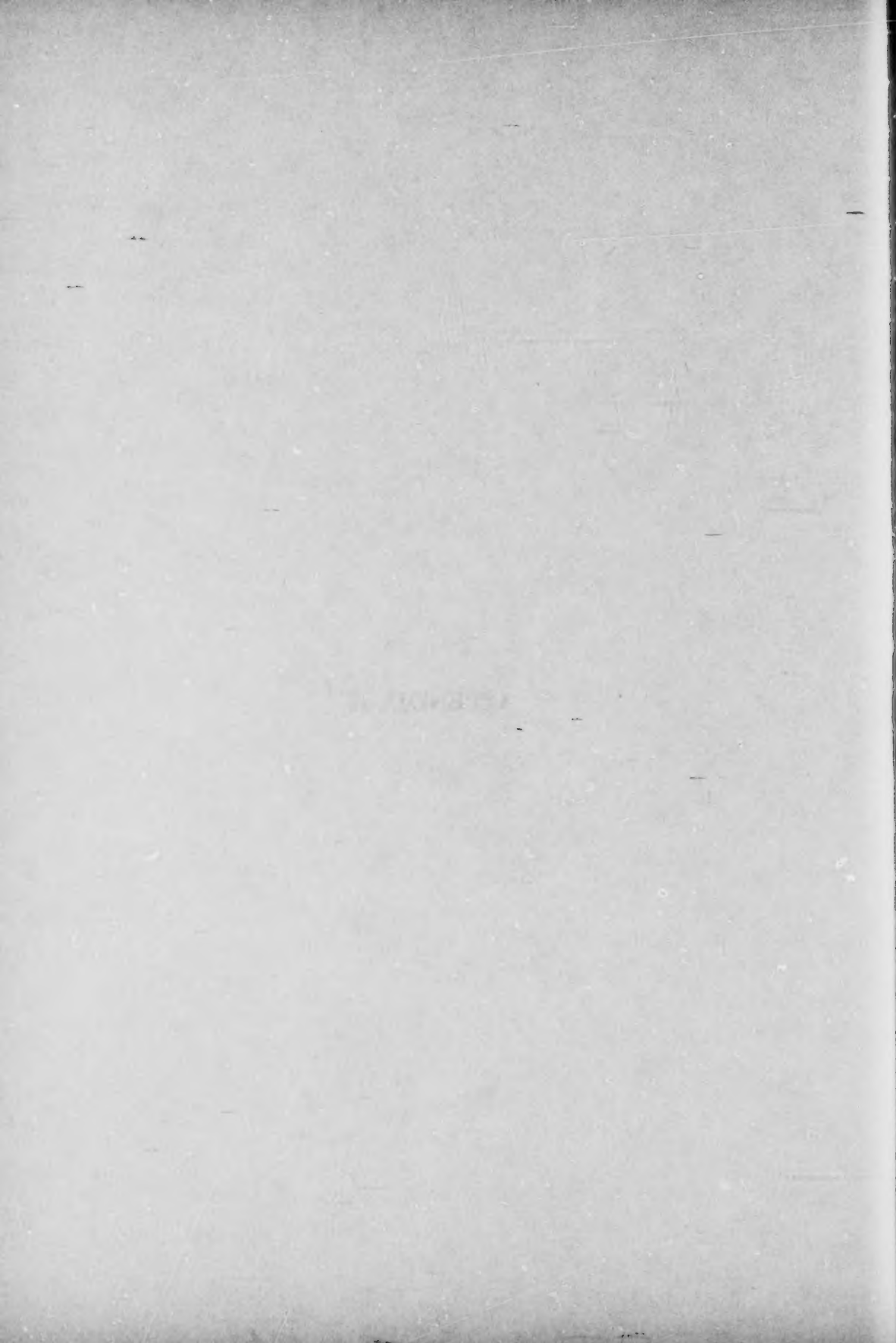
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Hon. JOHN L. COLE

Judge of the Superior Court



## **APPENDIX H**



## ARTICLE XVII

### DEPARTMENT OF PENSIONS

Sec. 180. The Board of Pension Commissioners shall administer the fire and police pension system of the City. (Amended, 1981.)

With respect to the management, administration and investment of the assets of the funds created by virtue of the provisions of Section 186 of this Article, the provisions of this section are the same as those of Section 190.07 of this Charter as of the effective date of this section, and they are hereby incorporated herein by express reference. Should the provisions of Section 190.07 be amended at any time, or should they be repealed, the provisions of this section shall be deemed and amended or repealed, as the case may be, the same as said Section 190.07. (Amended, 1981.)

Sec. 180.1. (Repealed, 1981.)

Sec. 180.2. Prior to the time that the board shall consist of 7 members, as provided by Section 70.1, each of its actions shall be adopted as provided by Section 76 or Section 180.

Subsequent to the time that the board shall consist of 7 members, each of its actions shall be adopted, except as hereinafter provided, by a vote of at least 4 of its members but never by a vote of 3 of its members out of a mere quorum of 4 of its members and, from and after such time, the board shall not make any investment in real property unless it shall be authorized by an order, motion or resolution adopted by all 7 members, and never less than all 7 members, of the board.

The provisions of Sections 76 and 180 hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. added, 1971.)

Sec. 181. Any member of the Fire or Police Department who shall have served in such department for twenty years or more in the aggregate in any capacity or rank whatever, on his request, or by order of the board, if it be deemed for the good of the department, shall be retired from further service in such department, and such member shall thereafter, during his lifetime, be paid in equal monthly installments a pension as follows: for twenty years' aggregate service, forty per cent (40%) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement; and an additional two per cent (2%) of such average rate of salary for each year over twenty and less than twenty-five years in the aggregate served by such member before retirement; for twenty-five years' aggregate service, fifty per cent (50%) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement; and an additional one and two-thirds per cent ( $1\frac{2}{3}\%$ ) of such average rate of salary for each year over twenty-five and less than thirty-five years in the aggregate served by such member before retirement; for thirty-five years or more aggregate service, two-thirds ( $\frac{2}{3}$ ) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement. Provided, further, however, that any such member of the Fire or Police Department who shall have become a member of such department prior to January 17, 1927, who shall have served in such department for thirty years in the aggregate in any capacity or rank whatever, shall,

on his request, or by order of the board, if it be deemed for the good of the department, be retired from further service in such department, and he shall thereafter, during his lifetime, be paid in equal monthly installments a pension equal to two-thirds ( $\frac{2}{3}$ ) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement. Provided, that after twenty years' aggregate service, on request of such member who shall have become a member of such department prior to January 17, 1927, or by the board for the good of the department, such member shall be retired and paid in equal monthly installments a limited pension as follows: For twenty years' aggregate service, fifty per cent (50%) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement; and an additional one and two-thirds per cent ( $1\frac{2}{3}\%$ ) of such average rate of salary for each year over twenty years and less than thirty years in the aggregate served by such member before retirement. (Amended, 1967.)

In computing the aggregate period of service of a member of the Fire or Police Department for the purposes of this section, there shall be included the period or periods of time, if any, while such member was on disability retirement pursuant to the provisions of Sections 182 or 182 $\frac{1}{4}$  of this charter. (Added, 1947.)

The provisions of this section are subject to the further conditions set forth in Section 181 $\frac{1}{2}$  of this charter. (Added, 1927.)

Sec. 181.1 (A) (1) A retired member, whenever retired, may file, with the Chief of the department from which he retired, a written application to be returned to active duty therein only upon the conditions: (a) that his original

retirement had been pursuant to Section 181 and had been (I) from the Fire Department while holding a rank no higher than Engineer or (II) from the Police Department while holding a rank no higher than Sergeant; (b) that, as of the filing date of such application, (I) the period of his original retirement had been no longer than 3 years and (II) he shall be under the age of 55 years; and (c) that he satisfactorily had passed a medical examination not more than 30 days prior to the effective date of his original retirement, provided, however, that the Chief, if the effective date thereof had been prior to the effective date of this section, may waive the condition contained in this (c).

(2) The Chief may approve any such application only upon the conditions that, subsequent to the filing date thereof, the retired member: (a) had passed a medical examination from which it had been determined that he would be capable of performing the duties which would be assigned to him if he were to be returned to active duty, provided, however, that such determination thereafter had been approved or concurred in by the board; and (b) had certified, in writing, that he had read and understands the provisions of this section and Section 190.041.

(3) The Chief, if he were to approve any such application, may return the retired member to active duty only in or to a vacant position in the rank held by him at the effective date of his original retirement.

(4) A retired member, if he were to be returned to active duty, thereafter shall be known as a "reactivated member" and, as such:

(a) His return to active duty shall be a privilege only and not an appointment as a Department Member as provided by Section 190.03 for the purposes of Article

XVIII, he shall be on probation for one year from and after the effective date thereof regardless of any other provision of law contained in this Charter or otherwise and the Chief may terminate his service at any time during such year;

(b) His pension, granted by reason of his original retirement, shall be terminated by the board as of the effective date of his return to active duty;

(c) His service subsequent to the effective date of his return to active duty, for the purposes of this Article and regardless of any other provision of law contained in this Charter or otherwise, shall consist of only (I) the days for which he shall be paid for performing his assigned duties, (II) his days of vacation with pay and (III) his regular days off duty with pay, and one year of such service shall consist of a total of 365 such days;

(d) His aggregate years of service, for the purposes of (I) his eligibility to advancement in accordance with Civil Service rules and regulations and (II) the payment of his salary and longevity pay or merit pay, shall consist of only (i) his years of service prior to the effective date of his original retirement and (ii) his service subsequent to the effective date of his return to active duty;

(e) His aggregate years of service, for the purposes of this Article and regardless of any other provision of law contained in this Charter or otherwise, shall consist of only (I) his years of service prior to the effective date of his original retirement and (II) his service subsequent to the effective date of his return to active duty, provided, however, that such service shall be for not less than one year as defined in Subparagraph (c) of this Paragraph (4);

(f) He shall be assumed to have a satisfactory standard of service and shall be paid (I) the salary provided for his rank and (II) the longevity pay or merit pay provided for his aggregate years of service as defined in Subparagraph (e) of this Paragraph (4), subject, however, to all provisions applicable to the termination of payment of longevity pay or merit pay;

(g) He shall have deductions made for pension purposes, pursuant to Section 186½, from his salary and longevity pay or merit pay;

(h) He never shall be entitled to a subsequent retirement pursuant to Section 182¼ and his widow, his minor child or children (hereafter referred to in this Paragraph (4) as "his child") or his dependent parent or parents (hereafter referred to in this Paragraph (4) as "his parent" never shall be granted a pension pursuant to Section 183½;

(i) He shall be entitled to a subsequent retirement pursuant to Section 182 if he were to become eligible therefor and upon his death, if he theretofore had had such a subsequent retirement, a pension shall be granted pursuant to applicable provisions of Section 183 to his widow, if she shall have been married to him (I) for at least one year prior to the effective date of his original retirement or (II) for at least one year subsequent to the effective date of his return to active duty and prior to the effective date of his subsequent retirement, or to his child or to his parent;

(j) His widow or his child or his parent, if he were to die while a reactivated member from any cause arising out of or from the performance of his duties, shall be granted a pension pursuant to applicable provisions of Section 183;

(k) His widow, if she shall have been married to him (I) for at least one year prior to the effective date of his original retirement or (ii) for at least one year subsequent to the effective date of his return to active duty and prior to the date of his death, or his child or his parent, if he were to die while a reactivated member from any cause other than a cause arising out of or from the performance of his duties, shall be granted a pension pursuant to applicable provisions of Section 183;

(l) His pension, granted by reason of his original retirement, if his service were to be terminated during the one year from and after the effective date of his return to active duty for any reason other than by reason of his subsequent retirement pursuant to Section 182, shall be reinstated by the board, as of the effective date of the termination of his service, at the amount of pension which then would have been payable to him if he had not returned to active duty and, upon his death, the pension which shall be granted pursuant to Section 183 to his widow, if she shall have been married to him for at least one year prior to the effective date of his original retirement, or to his child or to his parent, shall be calculated upon the salary upon which his pension had been calculated as of the effective date of his original retirement; and

(m) He shall be entitled to a subsequent retirement pursuant to Section 181, based upon his aggregate years of service as defined in Subparagraph (e) of this Paragraph (4), and his pension shall be calculated upon a sum equal to the salary upon which his pension had been calculated as of the effective date of his original retirement (hereinafter referred to as "such salary"), plus a percentage of the difference between such salary and his salary as of the effective date of his subsequent retire-

ment, for his years of service subsequent to the effective date of his return to active duty as defined in Subparagraph (c) of this Paragraph (4), so that such sum shall be (I) such salary plus 20% of such difference for one such year, (II) such salary plus 40% of such difference for two such years, (III) such salary plus 60% of such difference for three such years, (IV) such salary plus 80% of such difference for four years and (V) such salary plus 100% of such difference for five or more such years or the equivalent of his salary as of the effective date of his subsequent retirement and upon his death, if he theretofore had had such a subsequent retirement, the pension which shall be granted pursuant to Section 183 to his widow, if she shall have been married to him (i) for at least one year prior to the effective date of his original retirement or (ii) for at least one year subsequent to the effective date of his return to active duty and prior to the effective date of his subsequent retirement, or to his child or to his parent, shall be calculated upon the sum upon which his pension had been calculated as of the effective date of his subsequent retirement.

(5) The provisions of this Article and of Section 190.03 of Article XVIII hereafter shall be construed and applied, as to a reactivated member, his widow, his child and his parent, in accordance with respectively applicable provisions of Paragraph (4) of this subsection of this section.

(B)(1) The Chief shall promulgate such rules and set such standards as he may deem to be necessary or desirable with respect to recalling a retired member to active duty.

(2) a retired member, whenever retired, shall be eligible to be recalled to active duty in the department from which he retired only upon the conditions: (a) that his original retirement has been pursuant to Section 181 and

had been (I) from the Fire Department while holding a rank lower than Chief Engineer or (II) from the Police Department while holding a rank lower than Chief of Police; (b) that he had certified, in writing, that he had read and understands the provisions of this section; and (c) that he voluntarily had consented to be recalled to active duty.

(3) The Chief may recall a retired member to active duty: (a) only in or to a vacant position in the rank held by him at the effective date of his original retirement; and (b) for not to exceed 90 days in any one calendar year.

(4) A retired member, if he were to be recalled to active duty, thereafter shall be known as a "recalled member" and, as such:

(a) His recall to active duty shall be a privilege only and the Chief may terminate his service at any time;

(b) His pension shall be paid during the period of his recall to active duty;

(c) He shall be paid (I) the salary provided for his rank and (II) the longevity pay or merit pay provided for his aggregate years of service prior to the effective date of his original retirement;

(d) He shall have no deductions made for pension purposes, pursuant to Section 186½, from his salary and longevity pay or merit pay; and

(e) He, his widow, his minor child or children or his dependent parent or parents never shall be entitled to any pension benefits provided by this Article or Article XVIII by reason of his service as a recalled member.

(5) The provisions of this Article hereafter shall be construed and applied, as to a recalled member, his widow, his minor child or children and his dependent

parent or parents, in accordance with respectively applicable provisions of Paragraph (4) of this subsection of this section. (Added, 1969.)

Sec. 181½. The limitations of the amount of maximum pension payable pursuant to Section 181 of this Article shall apply uniformly to all members of the Fire and Police Departments. (Amended, 1957.)

Sec. 182. Whenever any member of the Fire or Police Department shall become so physically or mentally disabled by reason of bodily injuries received in, or by reason of sickness caused by the discharge of the duties of such person in such department as to render necessary his retirement from active service, the board shall order and direct that such member be retired from further service in such department; and thereafter such member so retired shall, during his lifetime, be paid a pension in an amount to be determined by the said board, but which pension shall be equal to not less than fifty per cent (50%), nor more than ninety per cent (90%), of the salary attached to the rank or position held by him in such department at the date of such retirement order. Such pension shall be paid in equal monthly installments. Provided, however, that any pension granted to any member of the Fire or Police Department for disability or sickness, as provided for in this section, shall cease when the disability or sickness ceases and such member shall, subject to civil service and other provisions of this charter governing the appointment of city employees, have been restored to active duty in such department of which such person was a member at the time of retirement to the same rank or position which such person held at said time. Provided, further, that the Board of Pension Commissioners shall have the power to hear and determine all matters pertaining to the granting and termination of any pension award

as provided for in this section. Said board shall make its findings in writing, based upon the report of at least three regularly licensed, practicing physicians, and such other evidence concerning such disability as it may have before it. Said board shall determine the degree of disability and such determination shall govern the amount of pension to be awarded to such disabled member as hereinabove provided; and provided, further, that upon the written request of any such retired member, or upon its own motion, said board shall have the power, at any time prior to the restoration of such retired member to active service, to consider new evidence pertaining to the case of any such retired member, and to increase or decrease the amount of such pension award to be thereafter paid. (Amended, 1967.)

Sec. 182¼. Any member of the Fire or Police Department who shall have served in such department for five years or more in the aggregate from the date of his last appointment to such department and who has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person in such department, and who is incapable as a result thereof from performing his duties, shall be retired upon written application of such person or of any person acting in his behalf or of the head of the department in which such member is employed. (Added, 1947.)

The board shall cause such member to be examined by and a written report thereon rendered by three regularly licensed, practicing physicians selected by said board, and shall hear such other evidence relating to such disability of such member as may be presented to said board. If, upon considering the report of such physicians and such other evidence as shall have been presented to it,

said board finds that said member has become physically or mentally incapacitated by reason of the injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such member in such department, and he is incapable as a result thereof of performing his duties, and if said board finds that such disability was not due to or caused by the moral turpitude of such member, he shall be retired from further service in such department, and thereafter such member so retired shall, during his lifetime, be paid a pension in an amount equal to forty per cent (40%) of the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of policeman or fireman at the date of such retirement order. Such pension shall be paid in equal monthly installments. Provided, however, that any pension granted to any member of the Fire or Police Department for disability or sickness as provided in this section shall cease when the disability or sickness ceases, and such member shall, subject to civil service and other provisions of this charter governing the appointment of city employees, have been restored to active duty in such department of which such person was a member at the time of retirement to the same rank or position which such person held at said time. Provided, further, that the Board of Pension Commissioners shall have the power to hear and determine all matters pertaining to the granting and termination of any pension award as provided for in this section. (Amended, 1967.)

This section shall be applicable only where a member is not entitled to a disability pension under the provisions of Section 182. (Added, 1947.)

Sec. 182½. If at any time any member of the Fire or of the Police Department or the widow, child or children, or

dependent parent or parents of any such member, or any other person hereafter entitled under the provisions of this article to pension benefits, shall be granted, because of the sickness, injury or death of such member, any compensation or award, under any general law providing for compensation or indemnity in case of the sickness, injury or death arising out of the performance of duty of such member, then and in that event any payments made pursuant to the provisions of this article to such member or to such widow, child or children; dependent parent or parents or other person, shall be construed to be and shall be payments of such compensation or award under such general law, and any payments made under the provisions of this article shall be first applied to payment of such compensation or award and any balance of such payments made pursuant to the provisions of this article shall be deemed to be pension payments; and it is hereby provided that the pension provided for in this article for such member or such widow, child or children, dependent parent or parents, or such other person in case of any such award under such general law, shall be reduced in amount to the difference between the amount of pension provided for in this article, and the total amount of such compensation or award granted and paid under such general law until the total amount awarded under such general law shall have been fully paid.

After payment of the total amount of such compensation or award granted under such general law the payments herein provided for shall continue as pension benefits subject to the provisions of this article. (Sec. added, 1927.)

Notwithstanding the foregoing provisions of this section, the board may provide by rule that compensation awards may be deducted on an installment basis; pro-

vided, however, that no such installment may be smaller than 25% of any monthly pension amount payable to the retired member. (Added, 1986)

Sec. 183. Whenever any member of the Fire or Police Department shall die as a result of any injury received during the performance of his duty, or from sickness caused by the discharge of such duty, or after retirement, or while eligible to retirement from such department on account of years of service, then an annual pension shall be paid in equal monthly installments to his widow, or child or children, or dependent parent or parents, in an amount equal to one-half ( $\frac{1}{2}$ ) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the time of his death or the date of his retirement from active duty in such department. Said pension shall be paid to the widow during her lifetime or until she remarries, and thereafter a pension shall be paid in equal monthly installments, in an amount equal to one-half ( $\frac{1}{2}$ ) of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the time of his death or the date of his retirement from active duty in such department to the legally appointed guardian of the child or children of such deceased member until such child or children shall have attained the age of eighteen years, or to his child or children should there be no widow until such child or children shall have attained the age of eighteen years, or to his dependent parent or parents during their lifetime or during such dependence, should there be no widow or child. Provided, however, that during the lifetime of such widow or until she shall remarry, an additional amount shall be paid to such widow for each child during the lifetime of such child, or until such child shall have married or reached the age of eighteen years, as follows:

For one child twenty-five per cent (25%) of the pension allowed as hereinabove set forth; for two children, forty per cent (40%) of such pension; and for three or more children, fifty per cent (50%) of such pension. Provided, further, however, that no widow of a pensioner shall be entitled to a pension unless she shall have been married to such deceased pensioner at least one year prior to the date of his retirement; and provided, further, that no widow of a member of the Fire or Police Department eligible for retirement from such department, who dies from causes other than those arising out of or from the performance of his duties, shall be entitled to a pension unless she shall have been married to such deceased member for at least one year prior to the date of his death, and provided, further, that if such widow, child or children shall marry, then the pension paid to the person so marrying shall cease, and provided, further, that should the dependency of such parent or parents terminate, then the pension paid to such dependent parent or parents shall cease. Provided, however, that the pension payable hereunder to the widow, child or children or dependent parent or parents of a member of the Fire or Police Department who became a member of such department on or subsequent to January 17, 1927, who, after retirement on account of years of service, but having served less than twenty-five years in the aggregate prior to the time of such retirement, or who, while eligible to retirement from such department on account of years of service, but prior to having served twenty-five years in the aggregate shall die from causes other than those arising out of or from the performance of his duties, shall not exceed the amount of the pension which such retired member was receiving at the time of his death or which such member eligible for retirement would have been eligible to receive at the date of his death under the

provisions of Sections 181 and 181½ of this charter, and the additional amount payable to such widow on account of children pursuant to the provisions of this section shall be the applicable percentage hereinabove set forth of a pension in such maximum amount. (Amended, 1947.)

Sec. 183½. Whenever any member of the Fire or Police Department (other than a member retired on account of years of service or a member eligible to retirement on account of years of service, but including a member retired on account of disability pursuant to the provisions of Section 182¼ of this charter) who shall have served in such department for five years or more in the aggregate from the date of his last appointment to such department, shall die from causes other than those arising out of or from the performance of his duties, then an annual pension shall be paid in equal monthly installments to his widow, or child or children, or dependent parent or parents, in an amount equal to forty per cent (40%) of the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of policeman or fireman at the date of such member's death. Said pension shall be paid to the widow during her lifetime or until she remarries, and thereafter a pension in the same amount shall be paid in equal monthly installments to the legally appointed guardian of the child or children of such deceased member until such child or children shall have attained the age of eighteen years, or to his child or children should there be no widow until such child or children shall have attained the age of eighteen years, or to his dependent parent or parents during their lifetime or during such dependence, should there be no widow or child, provided, however, that during the lifetime of such widow or until she shall remarry, an additional amount shall be paid to such widow for each child during the lifetime of such child, or until such child

shall have married or reached the age of eighteen years, as follows: for one child, twenty-five per cent (25%) of the pension allowed as hereinabove set forth; for two children, forty per cent (40%) of such pension; and for three or more children, fifty per cent (50%) of such pension. Provided, further, however, that no widow shall be entitled to a pension pursuant to the provisions of this section unless she shall have been married to such deceased member for at least one year prior to the date of his death.

And provided further, that no widow of a member who shall die while on disability retirement pursuant to the provisions of Section 182¼ of this charter shall be entitled to a pension pursuant to the provisions of this section unless she shall have been married to such deceased member for at least one year prior to the date of his retirement. (Added, 1947.)

Sec. 183.55. For the purposes of this Article, a "dependent child" means a person, but not including a person who is an illegitimate child of a deceased member of the Fire Department or the Police Department who had not been legitimated by such member, who is a legitimate child, a legitimated child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is not married and who, while under the age of 21 years, had become disabled, either prior or subsequent to the date of death of such member, from earning a livelihood for any cause or reason whatsoever, other than by reason of his own moral turpitude or as a result thereof, provided, however, that such person shall be a dependent child only until he: (1) shall be adopted by a person of the same gender as such member or shall marry, whichever shall be the earlier, regardless of his age at the

time of the occurrence of either such event and whether or not he then is disabled from earning a livelihood; (2) shall attain the age of 18 years if neither of the events mentioned in (1) had occurred prior thereto and if, at that time, he is not disabled from earning a livelihood; or (3) shall cease to be disabled from earning a livelihood if none of the events mentioned in (1) or (2) had occurred prior thereto.

The board shall have the power to determine whether or not a child of a deceased member is a dependent child and to determine, from time to time, the fact of whether or not a child who had been determined by it to be a dependent child continues to be a dependent child.

The provisions of Sections 283 and 183½ hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. Added, 1971.)

Sec. 183.56. For the purposes of this Article, an "eligible widow" means the widow of a deceased member of the Fire Department or the Police Department who, as such, is entitled to a pension.

Any eligible widow, who heretofore did or hereafter shall marry and thereby did or shall cease to be an eligible widow, shall be reinstated as an eligible widow as of the latest of: (1) the date upon which a judgment or decree did or shall become final dissolving such marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided, provided, however, that such date was or shall be within 5 years from the date of the marriage ceremony; (2) the date upon which such marriage was or shall be dissolved by the death of the other party thereto, provided, however, that such date was or shall be within 5 years from the date of the marriage ceremony; or (3) the date upon which this section shall

become effective, provided, however, that if either of the events mentioned in (1) or (2) had occurred prior thereto it had occurred within 5 years from the date of the marriage ceremony. Such reinstated eligible widow shall be entitled to the reinstatement of her pension effective as of the latest of such dates, whichever shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the marriage ceremony. The pension paid to any other person during or for the period of the marriage or purported marriage of such reinstated eligible widow or during or for any period after the dissolution thereof shall cease when her pension shall be reinstated. However, should such reinstated eligible widow thereafter be a party to another marriage ceremony her pension as such shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated. The pension which shall become payable to any reinstated eligible widow shall commence in the same monthly amount which then would have been payable if she never had ceased to be an eligible widow and thereafter it shall be adjusted as otherwise provided in Section 184.7, Section 184.8 or Section 184.9.

The provisions of Sections 183 and 183½ hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. Added, 1971.)

Sec. 183.57. For the purposes of this Article, "Assignment Pay" means any additional gross monthly pay or  $\frac{1}{12}$  of any additional gross annual pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the member's rank, shall be

provided therefor by ordinance, upon the conditions therein set forth, as of the date of the termination of such member's status as a member of the Fire Department or the Police Department.

Any such assignment pay shall not be considered as "the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of policeman or fireman" for the purposes of either Section 182¼ or Section 183½. Any such assignment pay hereafter shall be included in "the average monthly rate of salary assigned to the ranks or positions held by such member" in the case of a member who shall retire upon a service pension or in the case of a member who shall die while eligible for a service pension if he had received the same immediately preceding the date of his retirement or death or upon the last day he had performed duties as a member of the Fire Department or the Police Department or, if he had not received the same at either such time but had received such pay at some time prior thereto, 10% of the assignment pay which he had received at the time of the termination of his last assignment to such duties for each year in the aggregate of his assignment to such duties not exceeding, however, 10 years in the aggregate.

The provisions of Section 181, Subparagraph (m) of Paragraph (4) of Subsection (A) of Section 181.1 and Section 183 hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. Added, 1971.)

Sec. 183.58. For the purposes of this Article, "Partial Year of Service" means any period of less than 12 months for which the member, if it had been a complete year, would have been entitled to credit toward retirement.

In the case of any member who had become such on or subsequent to January 17, 1927, any such partial year of service shall be calculated from the end of the member's last completed year of service to the end of the payroll period immediately prior to the date of his retirement and shall be counted as part of his years of service for his retirement upon a service pension hereafter granted or for a pension hereafter granted to his widow, minor child or children, dependent child or children or dependent parent or parents if he hereafter shall die while eligible for a service pension prior to having served 25 years in the aggregate.

Any such partial year of service, in case of a member who shall have had less than 25 years of service, shall be credited in the same ratio of  $2\%$  of the average monthly rate of salary assigned to the ranks or positions held by him immediately proceeding the date of his retirement or death as such partial year shall bear to a complete year and, in the case of a member who shall have had 25 years of service or more, shall be credited in the same ratio of  $1\frac{2}{3}\%$  of such average rate of salary as such partial year shall bear to a complete year.

The provisions of Section 181, Subparagraph (m) of Paragraph (4) of Subsection (A) of Section 181.1 and Section 183 hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. Added, 1971.)

Sec. 183.6. Wherever used in this section. "person," "child," "guardian" and "estate" each shall include its plural.

Upon the death hereafter of a retired member, heretofore or hereafter retired pursuant to Section 182 $\frac{1}{4}$ , any person entitled to a pension pursuant to Section 183 $\frac{1}{2}$

must make and file with the board a written election to have the amount thereof calculated either upon the salary specified in Section 183½ or upon the salary specified in Section 182¼ and the board shall grant the pension in accordance therewith. Any such election, on behalf of any incompetent person or on behalf of a minor child of such member, must be made by the guardian of his estate and shall be either authorized or approved by a court order, a certified copy of which shall be filed with the board.

Section 183½ hereafter shall be construed and applied in accordance with this section. (Sec. Added, 1969.)

Sec. 184. That all pensions granted in accordance with the provisions of Sections 181, 182, 182¼, 183 and 183½ hereof shall remain in full force and effect for the period granted, and any increase or decrease of salaries of active members of the Fire and Police Departments shall not in anywise affect the amount of the pensions to be paid to retired members of such departments, or to any other person pensioned pursuant to the provisions of this article, nor shall the amount of such pensions be changed for any other reason, except as otherwise specifically provided in this article. (Amended, 1947.)

Sec. 184½. From and after the first day of the month succeeding the effective date of this Section, pension payments on account of service-connected disability or death granted prior to June 30, 1960, shall be increased as provided in paragraphs (a) and (b) hereof:

(a) In the case of a disability pensioner retired under the provisions of Section 182, the amount payable as of June 30, 1960 calculated, however, on the degree of disability as of the effective date of this Section, shall be increased in the ratio which the consumer price index for the month of June, 1960 bears to the consumer price

index for the month in which such pension became effective. The power vested in the Board of Pension Commissioners under the provision of Section 182 to change the amount of pension by reason of the degree of disability, as therein provided, is expressly continued and in the event of any such change subsequent to the effective date of this Section the amount established hereunder shall be increased or decreased in the ratio which the newly determined degree of disability bears to the degree of disability immediately preceding such change.

(b) In the case of a widow, or child or children, entitled to a pension based on service-connected disability or death pursuant to Section 183, the amount payable, calculated as of June 30, 1960, shall be increased in the ratio which the sum of the consumer price indexes for the three-year period ending June 30, 1960, or lesser period where the original pension was calculated on a period of less than three years, bears to the sum of such indexes for the period during which salary was originally taken into account in determining the amount of such pension; provided, however, that in the case of a widow receiving an additional amount on account of a child or children pursuant to Section 183, the increase provided by this Section shall first be calculated upon the amount due her, exclusive of such additional amount and the applicable percentage increase on account of children shall then be applied to her new pension amount.

The consumer price indexes referred to in this Section shall be those published by the Bureau of Labor Statistics for the Los Angeles area (all items and commodity groups 1947-49 = 100 base) and for those months for which a monthly index is not published, monthly indexes shall be established by a straight line interpolation between the published monthly indexes.

This Section shall not apply to any pension payment which fluctuates with the current salaries established for the several ranks and positions in the Fire or Police Department and in the event it is held by any final judgment or decree of a court of competent jurisdiction, subsequent to the effective date of this Section that any person granted an increase under the provisions of this Section is entitled to a fluctuating pension based upon such salary rates, then, from and after the effective date of such adjudication, this Section shall have no further force or effect as to such person.

The additional liabilities assumed by the System under this Section, shall be funded under the provisions of Section 186.2(2). (Sec. Added, 1961.)

Sec. 184.6. Each pension granted pursuant to this Article, regardless of the type of the pension, which shall be less in amount than \$250.00 per month as of the effective date of this section shall be increased to the amount of \$250.00 per month as of the first day of the month following such effective date, and the monthly amount of such pension thereafter shall not be reduced to a monthly amount less than such increased monthly amount except pursuant to Section 182½. (Added. 1967.)

Sec. 184.65. Subject to and upon the conditions contained in this section, the minimum monthly amount of pension provided by Section 184.6 shall be applicable, from and after the effective date of this section, to all pensions heretofore or hereafter granted pursuant to this Article. The monthly amount of each pension which, as of the first day of the month following the effective date of this section, is in a lesser monthly amount than the minimum monthly amount of pension provided by Section 184.6, as augmented pursuant to Section 184.7, shall be increased, effective as of said first day of the month, to

the minimum monthly amount of pension so provided and as so augmented. Each pension granted effective subsequent to said first day of the month shall be in a monthly amount not less than the minimum monthly amount of pension provided, as of the effective date of the pension, by Section 184.6, as augmented pursuant to Section 184.7. The monthly amount of any pension which is or shall be affected by the minimum monthly amount of pension provided by Section 184.6, as augmented pursuant to Section 184.7: (a) shall be subject to be reduced pursuant to Section 182½ despite any other provisions of this Article; and (b) shall be subject to be reduced pursuant to Section 182, Section 183 or Section 183½, whichever shall be applicable, provided, however, that any such reduction under this (b) shall be made only if it shall not reduce the monthly amount of the pension to a lesser monthly amount than the monthly amount of pension to which it had been increased pursuant to Section 184½ or to a lesser monthly amount than the minimum monthly amount of pension provided by Section 184.6, as augmented pursuant to Section 184.7 effective as of the date of any such reduction, whichever shall be the greater. (Sec. Added, 1967.)

Sec. 184.7. The Board of Pension Commissioners, before May 1st of each year commencing with the year 1967, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1st of that year from March 1st of the preceding year, as shown by the consumer price index published by the Bureau of Labor Statistics for the area in which the City of Los Angeles is located. If any such index were not to reflect the cost of living as of a particular March 1st, then the next preceding such index which had done so shall be used. If there were to be any change in the statistical method or the components which were used in any such

index from those which were used in any such index of the preceding year with which a comparison is to be made, then said board, to the extent possible, shall adjust any such differences therein for the purpose of determining the percentage of increase or decrease in the cost of living.

Commencing as of July 1st of the year in which said board shall so determine the percentage of increase or decrease in the cost of living, the amounts of certain pensions, as hereinafter identified and upon the conditions hereunder stated therefor, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living but not to exceed, however, 2% in any given year. Such determined percentage of increase or decrease in the cost of living, as so limited, shall be applied to the amounts of such pensions which shall be payable for the preceding month of June, including any previous percentage of increase or decrease in the cost of living made with respect thereto.

The percentage of increase or decrease in the cost of living first shall be applied to:

(1) The pension of any person, whose pension shall be increased pursuant to Section 184.6, upon the July 1st following the effective date of this section;

(2) The pension of any retired member who had been retired or who shall be retired pursuant to Section 181 prior to July 1, 1967, upon a pension which shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon July 1, 1967 if he shall have attained the age of 55 years prior to that date, or, if he shall not have attained such age prior

to that date, upon the July 1st following the date upon which he shall have attained such age;

(3) The pension of any retired member who shall be retired pursuant to Section 181 subsequent to July 1, 1967, upon a pension which shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon the July 1st following the effective date of his pension if he shall have attained the age of 55 years prior to that date or, if he shall not have attained such age prior to that date, upon the July 1st following the date upon which he shall have attained such age;

(4) The pension of any widow, minor child or children or dependent parent or parents which had been or shall be granted pursuant to Section 183 prior to July 1, 1967, following the death of a retired member who had been retired pursuant to Section 181 or of an active member who had become eligible to retire pursuant thereto, and which pension shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon July 1, 1967 if such retired member or such active member, as the case may be, would have attained the age of 55 years prior to that date if he had been alive on that date or, if he would not have attained such age prior to that date if he had been alive on that date, upon the July 1st following the date upon which he would have attained such age if he had been alive on that date; and (Added, 1967.)

(5) The pension of any widow, minor child or children or dependent parent or parents which shall be granted pursuant to Section 183 subsequent to July 1, 1967, following the death of a retired member who had been retired pursuant to Section 181 or of an active member

who had become eligible to retire pursuant thereto, and which pension shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon the July 1st following the effective date of such pension if such retired member or such active member, as the case may be, would have attained the age of 55 years prior to that date if he had been alive on that date or, if he would not have attained such age prior to that date if he had been alive on that date, upon the July 1st following the date upon which he would have attained such age if he had been alive on that date. (Added, 1967.)

The amount of any pension referred to in (1), (2), (3), (4) or (5) hereof never shall be reduced, by reason of the application thereto of this section, to an amount less than the amount to which any pension referred to in Section 184.6 shall be increased or to an amount less than the amount thereof originally granted. (Added, 1967.)

If the percentage of increase or decrease in the cost of living in any year, as determined by said board, were to exceed 2% as compared with the cost of living as of March 1st of the preceding year, the percentage of increase or decrease in the cost of living in excess of 2% shall be carried over and added to or subtracted from the percentage of increase or decrease in the cost of living in the succeeding year, and such procedure shall be complied with from year to year. (Added, 1967.)

Sec. 184.8. The provisions of Section 184.7, if otherwise not applicable as of the effective date of this section to any pension referred to in Section 184.65, shall be applicable thereto, from and after the effective date of this section, to the same extent and in the same manner as they are applicable to any pension referred to in Section 184.6. Any adjustments provided to be made in monthly

amounts of pensions pursuant to Section 184.7 shall be applicable to the monthly amounts of other pensions which are not referred to in said section or in the foregoing provisions of this section whenever the monthly amounts of any such other pensions otherwise would be in lesser monthly amounts than the minimum monthly amount of pension provided by Section 184.6, as then augmented pursuant to Section 184.7 (Sec. Added, 1967.)

Sec. 184.9. (A) Wherever used in this section: (1) "the pension" shall mean, unless Section 184.7 shall be mentioned in conjunction therewith, only a pension which (a) is not identified in Section 184.7, (b) is not referred to in Section 184.8 and (c) is in an amount which shall not increase or decrease by reason of any increase or decrease in the salary of any active member; (Added, 1969.);

(2) "the July 1st following" shall mean only a July 1st subsequent to the effective date of this section; and (3) "person" shall include its plural. (Added, 1969.)

(B) The percentage of increase or decrease in the cost of living hereafter shall be applied pursuant to Section 184.7 and the terms and conditions contained in this section. (Added, 1969):

(1) To the pension of any retired member, heretofore or hereafter retired pursuant to Section 182, upon the July 1st following (a) the date of his retirement or (b) the effective date of this paragraph of this section, whichever shall be the later; or Section 182¼ upon the July 1st following (a) the date he shall have attained the age of 55 years or (b) the fifth anniversary of the effective date of the pension, whichever shall be the earlier; (Amended, 1975.)

(2) To the pension of any person, (a) heretofore or hereafter granted pursuant to Section 183 or Section 183½ upon the death of an active member not eligible to retire pursuant to Section 181, (b) heretofore or hereafter granted pursuant to Section 183 upon the death of an active member eligible to retire pursuant to Section 181 and which pension of such person is identified in Paragraph (4) or Paragraph (5) of Section 184.7, (c) heretofore granted pursuant to Section 183½ upon the death of a retired member theretofore retired pursuant to Section 182¼, or (d) hereafter granted pursuant to Section 183½ upon the death of a retired member theretofore retired pursuant to Section 182¼ where the amount of the pension shall be calculated upon the salary specified in Section 183½ by reason of such person's written election therefor pursuant to Section 183.6, upon the July 1st following (I) the date such member shall have attained the age of 55 years, (II) the date such member would have attained such age if he then had been alive or (III) the fifth anniversary of the effective date of the pension of such person, whichever shall be the earliest; and

(3) To the pension of any person, (a) heretofore or hereafter granted pursuant to Section 183 upon the death of a retired member theretofore retired pursuant to Section 182, (b) heretofore or hereafter granted pursuant to Section 183 upon the death of a retired member theretofore retired pursuant to Section 181 and which pension of such person is identified in Paragraph (4) or Paragraph (5) of Section 184.7, or (c) hereafter granted pursuant to Section 183½ upon the death of a retired member theretofore retired pursuant to Section 182¼ where the amount of the pension shall be calculated upon the salary specified in Section 182¼ by reason of such person's written election therefor pursuant to Section 183.6, upon the July 1st following (I) the date such member shall have

attained the age of 55 years, (II) the date such member would have attained such age if he then had been alive or (III) the fifth anniversary of the effective date of the pension of such member, whichever shall be the earliest.

(C) The following provisions, in respects other than those provided for a Subsection (B) of this section, hereafter shall be controlling in the application to certain pensions of the percentage of increase or decrease in the cost of living.

(1) Whenever the amount of the pension (a) of any retired member shall be increased or decreased pursuant to Section 182 or (b) of any widow shall be increased or decreased pursuant to Section 183 or Section 183½: (I) the amount of any such increase shall not include the percentage of any increase in the cost of living which theretofore had been applied to the former amount of the pension; and (II) the amount of any such decrease shall include the percentage of any increase in the cost of living which theretofore had been applied to it as a portion of the former amount of the pension.

(2) Whenever the pension of any person, (a) hereafter shall be granted pursuant to Section 183 upon the death of a retired member theretofore retired pursuant to Section 181 and which pension of such person is identified in Paragraph (4) or Paragraph (5) of Section 184.7, (b) hereafter shall be granted pursuant to Section 183 upon the death of a retired member theretofore retired pursuant to Section 182 or (c) hereafter shall be granted pursuant to Section 183½ upon the death of a retired member theretofore retired pursuant to Section 182¼ where the amount of the pension shall be calculated upon the salary specified in Section 182¼ by reason of such person's written election therefor pursuant to Section 183.6, the amount of the pension of any such person, (I) if

the amount thereof which shall be payable to such person were to be more than the amount of the pension which had been payable to such member, shall include the percentage of any increase in the cost of living which had been applied to the pension of such member, or (II) if the amount thereof which shall be payable to such person were to be less than the amount of the pension which had been payable to such member, shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such member which shall be in the same ratio as the amount of the pension which shall be payable to such person shall bear to the amount of the pension which had been payable to such member, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such member as of the date of his death shall be carried over for such person if (I) hereof were to be applicable or in the same ratio therein provided if (II) hereof were to be applicable.

(3) Whenever the pension of any widow hereafter shall be terminated pursuant to Section 183 or Section 183½ and the pension therein provided thereafter shall become payable pursuant thereto on behalf of any minor child or children of the deceased member, the amount of pension on behalf of such child or children shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such widow which shall be in the same ratio as the amount of the pension which shall be payable on behalf of such child or children shall bear to the amount of the pension which had been payable to such widow, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such widow as of the date of the termination of her pension shall be

carried over on behalf of such child or children in the same ration hereinabove provided.

(D) The amount of the pension never shall be reduced, by reason of the application thereto of the provisions of Section 184.7 of this section, to an amount less than: (1) the amount thereof if Section 184½ is applicable thereto; (2) the amount thereof if Section 184.6 is applicable thereto; (3) the amount thereof if Section 184.65 is applicable thereto; or (4) the amount thereof payable pursuant to provisions of this Article, other than those of Section 184.7 or this section, if none of the sections mentioned in (1), (2) or (3) above is applicable thereto.

(E) Section 184.7 hereafter shall be construed and applied in accordance with this section as to each pension mentioned in this section. (Sec. added, 1969.)

Sec. 184.95. (A) Each pension granted pursuant to this Article, regardless of the type of the pension, which became or becomes effective prior to July 1, 1971 and which, as of June 30, 1971, is in a monthly amount of less than \$350.00 shall be increased, effective July 1, 1971, pursuant to the provisions of Subsection (B) and Subsection (C) of this section, and shall, if such increase results in a monthly pension amount which is less than \$350.00, be increased to provide for a monthly minimum pension of \$350.00. Each pension granted pursuant to this Article, regardless of the type of the pension, which becomes effective on or subsequent to July 1, 1971 shall be in a monthly amount not less than the minimum monthly pension amount provided, as of the effective date of the pension by this subsection of this section. The monthly amount of each such pension never shall be reduced, by reason of the provisions of Section 184.7, Section 184.8, Section 184.9 or Subsection (C) of this section, to a

monthly amount less than the minimum monthly pension amount provided by this subsection.

— (B) The monthly amount of pension of each retired member or other person which, prior to the effective date of this section, had been increased by reason of a cost of living adjustment thereof pursuant to Section 184.7, Section 184.8 or Section 184.9 shall be increased, as of July 1, 1971, by that portion of the percentage of the annual increase in the cost of living, as had been determined by the Board of Pension Commissioners pursuant to Section 184.7, which was in excess of 2% but not in excess of 3% for each year the monthly amount of such pension had been increased.

(C) The monthly amount of pension of each retired member or other person who heretofore did qualify or hereafter shall qualify for a cost of living adjustment thereof pursuant to Section 184.7, Section 184.8 or Section 184.9 and the monthly amount of pension of each retired member or other person which shall be the minimum monthly pension amount provided by Subsection (A) of this section, hereafter shall be increased or decreased, as of the dates provided therefor by Section 184.7, by the percentage of the annual increase or decrease in the cost of living as hereafter shall be determined by said board pursuant to Section 184.7.

(D) The provisions of Section 181, 182, 182¼, 183, 183½, 184½, 184.6, 184.65, 184.7, 184.8 and 184.9 hereafter shall be construed and applied in accordance with the provisions of this section.

(E) Should any provision of this section at any time be held to be invalid, in their application to certain persons or periods of time, such invalidity shall not affect the validity of any provisions as to other persons entitled to

benefits hereunder or the applicability as to other periods of time.

(F) The operative date of this section is July 1, 1971.  
(Sec. added, 1971.)

Sec. 184.96.

(A) (1) Cost of living adjustments of any pension hereafter granted pursuant to the provisions of this Article shall, as of the effective date of this Section, be subject to certain limitations as hereinafter more specifically provided:

At the time each such pension shall become eligible for cost of living adjustments, as provided in this Article, it shall be adjusted in accordance with a formula which shall take into account years of service and partial years of service served by a member prior to the effective date of this Section, hereafter referred to as "prior service" and years of service and partial years of service served subsequent to such effective date, hereafter referred to as "subsequent service". Cost of living adjustments shall consist of two parts, one of which shall be on account of all prior service of the retired former member and the other part on account of all subsequent service of the retired former member. As to prior service, such former member shall be entitled to have his or her pension increased or decreased as of the dates provided therefor by Section 184.7, by the percentage of the annual increase or decrease in the cost of living as shall be determined by the Board of Pension Commissioners pursuant to Section 184.7, and in accordance with the formula hereafter set forth, and such prior service shall be known as the "uncapped cost of living portion". As to subsequent service, such former member shall be entitled to have his or her pension increased or decreased, as of the dates

provided therefor by Section 184.7, by a percentage not to exceed an increase or decrease of 3% in any given year and, in accordance with the formula hereafter set forth, and such subsequent service shall be known as the "capped cost of living portion".

(2) The applicable formula to be employed in calculating the total cost of living adjustment to which retired former members, whose cost of living adjustments are subject to the conditions and limitations contained in this Section are entitled, shall be as follows: The percentage that prior years of service of a member bears to the total years of service of such member shall be applied to his or her pension when computing cost of living adjustments and that amount shall be considered the uncapped cost of living portion; and the remaining amount of the pension shall be considered the capped cost of living portion. For purposes of applying the above formula, the total years of service to be considered shall not exceed thirty years.

(3) Pensions which become payable before July 1 of any year, but subsequent to the preceeding July 1, will be adjusted as to the uncapped cost of living portion and the capped cost of living portion on a prorated basis whereby one-twelfth ( $1/12$ ) of the annual adjustment shall be applied for each completed month since such pension commenced.

(4) Pensions payable to the eligible survivors of deceased former members or retired former members shall receive cost of living adjustments according to the formula provided in this Section, whereby such formula will be based upon the years of prior service and years of subsequent service of the deceased former member or the retired deceased former member as applied to the pension upon which the survivor's pension will be calculated.

(B) The capped cost of living portion may be subject to discretionary cost of living adjustments as hereinafter specified. To the extent that the percentage of the capped cost of living portion of the cost of living adjustment provided in Subsection (A) hereof is less than the annual change in the cost of living as determined pursuant to the provisions of Section 184.7 of this Article, the City Council may grant discretionary cost of living adjustments of the capped cost of living portion in addition to the annual cost of living adjustments, subject to the following conditions and requirements:

(1) Discretionary adjustments may not be provided more frequently than once every three (3) years, counting from the effective date of this Section and, after a discretionary adjustment has once been made, counting from the date the last discretionary adjustment became effective.

(2) Discretionary adjustments shall not exceed one-half ( $\frac{1}{2}$ ) of the difference between the percentage of the annual increases in the cost of living, as determined pursuant to the provisions of Section 184.7 of this Article and of the annual capped cost of living portion adjustments made pursuant to the provisions of this Section for each of the preceding three (3) years. Discretionary adjustments shall be allocated to each of the three (3) years for which an adjustment is made.

(3) Discretionary adjustments herein provided shall be subject to the following limitations: If a pension became payable on or after the July 1 immediately preceding the effective date of such adjustment, it shall not be so adjusted; and any pension which shall have become payable at a time within the three (3) year period (but prior to the immediately preceeding July 1) shall be prorated on a monthly basis to the number of completed

months for which the pension was received, provided that survivorship pensions paid pursuant to the provisions of this Article shall be adjusted by basing eligibility on the date upon which the retired former member's pension became effective.

(4) Discretionary cost of living adjustments may be provided only by ordinance. Ordinances providing discretionary adjustments may not be finally adopted until the City Council has first obtained and published a report from the actuary or actuaries of the Fire and Police Pension System indicating the present value of the liabilities that will be created by the proposed discretionary adjustment. This report must identify the annual funding cost of amortizing this liability over the funding period provided by the provisions of this Article.

(5) Ordinances adopted pursuant to this Subsection must be adopted by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council in the same manner as other ordinances requiring a two-thirds vote. No such ordinance may be finally adopted by the Council until the expiration of at least thirty (30) days after its first presentation to the Council, nor until after a public hearing has been held thereon. Ordinances adopted pursuant to this Subsection shall be published no later than November 30 and shall become effective January 1.

(6) All adjustments provided in this Subsection are to be applied prospectively only and shall not be understood to permit retroactive adjustments of pensions.

(C) In no event shall pensions adjusted pursuant to the provisions of Subsection (B) of this Section ever be decreased below the amount received by the eligible

recipient of a pension under the provisions of this Article when such pension first became payable to him or her.

(D) Should any provision of this Section at any time be held to be invalid, in its application to certain persons or periods of time, such invalidity shall not affect the validity of that or any other provision as to other persons entitled to benefits hereunder or the applicability as to other periods of time. (Sec. added, 1982)

Sec. 185. For the purpose of the provisions contained herein, the Fire Department shall consist of all persons duly and regularly appointed in the Fire Department under civil service rules and regulations to perform the duties of a regular fireman in the City of Los Angeles, under whatever designation they may be described in any salary or departmental ordinance providing compensation for said Fire Department; and the Police Department shall consist of all members of such Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of a regular police officer of the City of Los Angeles, under whatever designation that they may be described in any salary or departmental ordinance providing compensation for the members of said Police Department. The provisions as herein in this charter contained shall apply to all members of the Fire and Police Departments as in this section defined, and to all members of said departments who have been heretofore granted pensions. (Amended, 1947.)

Sec. 185.1. Any person deputized or appointed as a reserve or an auxiliary policeman, police officer or peace officer of the City of Los Angeles to perform police duties or functions upon a part-time basis: (1) shall not be and shall not be deemed to be or to have been a member of the Police Department, as defined in Section 185, for any of

the purposes of this article; (2) shall not be entitled, and his widow and any of his surviving minor children or dependent parents shall not be entitled, to the payment of any pension provided for in this article; and (3) shall not have any deductions made for pension purposes from any moneys which shall be paid to him by said City or said department. (Added, 1968.)

Sec. 186. Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Article and certain other benefits as may be authorized from time to time pursuant to the enabling provisions of Section 189 of this Article, one of which shall be known as the "Fire and Police Service Pension Fund" and the other of which shall be known as the "Fire and Police General Pension Fund". (Amended, 1974.)

The Fire and Police Service Pension Fund shall consist of:

(a) Contributions made, pursuant to Section 186½, from the salaries of members of the Fire Department and of the Police Department; (Amended, 1967.)

(b) All moneys which shall be on deposit to the credit of the Service Pension Account of the formerly provided Fire and Police Pension Fund as of the effective date of this section; and (Amended, 1967.)

(c) All interest, earnings and profits resulting from investments of such moneys. (Amended, 1967.)

The Fire and Police General Pension Fund shall consist of:

(a) All receipts from taxes levied pursuant to Section 186.2; (Amended, 1967.)

(b) All moneys which shall be on deposit to the credit of the General Pension Account of the formerly provided Fire and Police Pension Fund as of the effective date of this section; (Amended, 1967.)

(c) All securities which, prior to the effective date of this section, were held in the name of the Board of Pension Commissioners; (Amended, 1967.)

(d) All interest, earnings and profits resulting from the securities referred to in (c) above and from other investments of such moneys; and (Amended, 1967.)

(e) All moneys transferred from the New System General Pension Fund created and established by Article XVIII of this Charter. (Amended, 1967.)

The moneys in the Fire and Police Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 181. The moneys in the Fire and Police General Pension Fund shall be used, other than for the investment thereof and except as hereinafter in this immediate paragraph provided, exclusively for the payment of all pensions other than service pensions and such other benefits as may be provided by ordinance adopted pursuant to the provisions of Section 189 of this Article. In the event that the moneys in the Fire and Police Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board of Pension Commissioners shall have the power and authority to cause the Controller of the City to transfer to said fund sufficient moneys therefor from the Fire and Police General Pension Fund. In no other event shall any of the moneys in either of said funds be commingled with any of the moneys in the other of said funds, whether as moneys

or cash on deposit or as moneys invested. (Amended, 1974.)

Sec. 186.1. The Fire and Police Pension System shall be maintained on a reserve basis which, for the purposes of this article, shall mean one which provides for the accumulation and maintenance of the Fire and Police Service Pension Fund and the Fire and Police General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the moneys to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of moneys with which they are to be paid in accordance with the provisions of Sections 186.2 and 186½.

The Board of Pension Commissioners, as soon as it may deem it to be practicable after the effective date of this section but prior to the beginning of the fiscal year 1967-1968 and in time for its use in preparing its annual budget for said year, shall secure an actuarial valuation showing the cost of maintaining said system and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the members and beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of said funds.

The assumed rate of interest with respect to the fiscal year 1967-1968 and to the first actuarial valuation shall be four percent per annum. Thereafter, said board, from time to time and with the advice of the investment counsel,

shall establish such rate as in its judgment seems proper in the light of the experience and prospective earnings on the investments of said funds.

Said board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies and reports on the required investigations and valuations.

With the advice of the consulting actuary and of the investment counsel, said board, for the purpose of the actuarial valuations, shall provide by rule for the manner and to the extent to which any unrealized profits or losses in the equity-type investments of the funds shall be taken into consideration. (Sec. amended. 1967.)

Sec. 186.2. Said board shall annually prepare and transmit to the Mayor, Council and Controller a budget setting forth the estimated cost of maintaining Fire and Police Pension Fund and the Fire and Police General Pension Fund, which said budget shall include therein separate items as follows (Amended, 1966):

(1) A sum equal to that percentage of the salaries of all members of said pension system shown in the last rendered actuarial valuation to be required to cover the entry age cost to be paid by the City on account of new entrants into the system, said entry age cost being defined as the level percentage of compensation of new entrants which must be paid into the Fire and Police General Fund from their date of entry in order to provide the benefits under the system, less the contributions to be made by such new entrants during the period of their membership as provided in Section 186½; provided, however, that the board shall include in its budget for the fiscal year 1967-1968 a sum equal to 7.55% of the estimated total payrolls, for said year, of the Fire Depart-

ment and of the Police Department for all members of said departments. (Amended, 1966.)

(2) A sum equal to the dollar amount shown in the last rendered actuarial valuation to be required to amortize the unfunded liabilities of the system; said unfunded liabilities being defined as the present value of all of the assumed obligations of the system, less the present value of the future contributions to be made by the City under the preceding subsection and by the members under Section 186½, and less the assets of the Fire and Police Service Pension Fund and of the Fire and Police General Pension Fund. The amortization period shall be seventy years beginning with the fiscal year 1967-1968. (Amended, 1975.)

(3) A sum sufficient to cover the cost, as determined by an actuarial estimate, of benefits granted by the City Council under the authority of Section 189 of this article. (Repealed 1966; Added 1974.)

For the purpose of providing funds to meet the budget of the Fire and Police Pension System and of its Fire and Police Service Pension Fund and of its Fire and Police General Pension Fund the Council or Controller shall annually levy, in addition to all other taxes levied by the City, a tax clearly sufficient to provide the total amount of all items in said budget. (Amended, 1966.)

Sec. 186½. Each member of the Fire Department and of the Police Department included within the pension provisions of this Article shall contribute to said Fire and Police Service Pension Fund in the manner as hereinafter in this Section provided, except that further contributions to the Fund shall not be required from an employee who has served as a member of the Fire Department or of the

Police Department for more than thirty years. (Amended, 1983.)

The administrative head of such department shall cause to be shown on each and every payroll of said department a deduction of six per cent (6%) of the amount of salary, as shown on each payroll, of each such member whose name appears thereon, and shall certify to the Controller on each such payroll the amount to be deducted from the compensation of each such member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board of Pension Commissioners for the total amount of deduction shown on each payroll of such department, and said board shall deposit said payroll check to the credit of the Fire and Police Service Pension Fund. It shall be the duty of the administrative head of each department to cause to be furnished a copy of each and every such payroll hereinbefore mentioned to the said Board of Pension Commissioners.

Each member shall be deemed to consent and agree to each deduction made as provided for herein and the payment of each payroll check to such member shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by each member during the period covered by such payroll, except such claims as such member has to the benefits or payments provided for in this Article.

Every person who is a member of the Fire and Police Pension System on July 1, 1982 shall, upon termination of employment, be entitled to a refund of contributions made by him or her pursuant to the provisions of this Section, a person not a member on July 1, 1982 and whose employment terminated prior to said date, shall not be entitled to a refund of contributions made by him or her during periods of membership prior to said July 1, 1982.

The refund of contributions shall be subject to the following conditions and limitations:

Upon termination of employment as a member of the Fire Department or the Police Department for any reason except retirement pursuant to the provisions of this Article, a member shall be entitled to have refunded to him or her all contributions made by such member to the Fire or Police Service Pension Fund prior to the effective date of this Section, plus 6% per annum interest on such contributions calculated in the same manner as if interest had regularly been credited to the member's contributions, compounded as of the last day of the last pay period of December and to the end of the last pay period preceding the effective date of termination of employment.

Starting July 1, 1982 the board shall maintain an individual account of the contributions by each member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year after July 1, 1982, at such rate as the board may deem proper in light of the earnings of the funds of the Fire and Police Pension System, exclusive of profits and losses on principal heretofore or hereafter resulting from sales of securities. No such interest shall be credited at any other time; provided, however, that such interest shall be credited to the individual account of a member whose employment is terminated for any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to members' individual accounts. Should a member entitled to a refund of contributions fail to demand payment thereof within ten (10) years from the date of termination of employment of the member, said contribu-

tions shall be transferred to such reserve account or accounts of the Fire and Police Pension System as the board, in its sole discretion, may determine and, thereafter, any action or proceeding to enforce payment thereof to any such member or his or her estate shall be forever barred.

Members who elect to receive a refund of contributions, forfeit the right to benefits provided in this Article. After payment of any pension benefit has commenced, said member forfeits the right to a refund of the member's contributions. Members who return to active duty from a disability pension may not thereafter have contributions made by them prior to their retirement on such disability pension refunded.

Members shall have the right to designate persons who shall be entitled to receive monies to which a member would otherwise be entitled upon termination of employment, to be payable to such designated person or persons upon the member's death; provided, however, that no such monies shall become payable if any person should be entitled to any other benefit provided in this Article. The board shall adopt appropriate forms for the designation by members of persons who shall be such member's beneficiaries. (Sec. amended, 1982.)

Sec. 186.6. Whenever a member, for overtime work, shall take a period of time off with pay: (a) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his regular salary if such period had been one of regular work; (b) such pay shall be part of the salary assigned or attached to the rank or position held by him but only in the same amount as that which would have been his regular salary if such period had been one of

regular work; and (c) such period shall be part of his years of aggregate service.

Whenever a member, for overtime work, shall receive a cash payment: (a) a deduction for pension purposes shall not be made from such payment; (b) such payment shall not be part of the salary assigned or attached to the rank or position held by him; and (c) the period of overtime work for which he shall receive such payment shall not be part of his years of aggregate service except that any period of a member's overtime work, for which he shall not have taken time off with pay, shall be credited, by the Board of Pension Commissioners, as part of his years of aggregate service, upon his or his survivor's written request therefor, to the same extent as he would have been entitled to take therefor time off with pay but only to the extent, and not in excess thereof, that he, while a member, shall have had any period of absence from work without pay, provided, however, that such request shall be accompanied with payment of the amount which would have been deducted for pension purposes from his regular salary if the period of overtime work, to the extent credited, had been one of regular work. (Sec. added, 1968.)

Sec. 187. (Repealed, 1965.)

Sec. 188. The positions of general manager of the department and of secretary to the board may be consolidated, in the discretion of the board. (Added, 1925.)

Sec. 189. Authority of City Council to Establish Certain Benefits by Ordinance.

(a) Purpose of this Section.

It is the purpose of this section to enable the City Council of the City of Los Angeles to provide by ordinance a program or programs whereby persons receiving

pensions pursuant to the provisions of this article may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the City Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

(b) Mode of Adoption of Ordinance.

Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council in the same manner as other ordinances requiring a two-thirds vote. No such ordinance may be finally adopted by the Council until the expiration of at least thirty days after its first presentation to the Council, nor until after a public hearing has been held thereon.

Any ordinance adopted pursuant to this section shall go into effect upon the expiration of thirty days from its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates.

(c) Limitations on City Council's Authority.

An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a city fund or funds other than those created under Section 186 of this article, would be in excess of the maximum available subsidy payment for beneficiaries under the provisions of any ordinance adopted pursuant to the authority of Section 512.2 of this Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the Fire and Police Pension System.

Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board of Pension Commissioners. In furtherance thereof, the Board shall have the authority to contract for suitable programs as hereinabove defined in subsection (a) hereof, to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs.

Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, provided, however, that the Board shall reimburse the General Fund of the City of Los Angeles for all necessary expenses incurred by the Personnel Department as a result thereof.

The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments on the following conditions only: (1) to reflect changes in subsidies provided for active members or (2) to offset any increases or decreases in the level of benefits referred to in subsection (a) of this section or the cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

(d) The provisions of Section 180 hereafter shall be construed and applied in accordance with the provisions of this section. (Sec. repealed, 1951; Added, 1974.)

## ARTICLE XVIII

### DEPARTMENT OF PENSIONS

(Formerly entitled, "Department of Playground and Recreation"; Secs. 190-194, repealed 1947; new article added 1967.)

**Sec. 190.01. New Pension System.**

There hereby is created, established and adopted, separate and apart from the Fire and Police Pension System provided by Article XVII of this Charter, a pension system, which shall be known as the "New Pension System" but which hereinafter shall be referred to merely as "the New System", providing pension benefits for certain members of the Fire Department and of the Police Department of the City of Los Angeles and for certain other beneficiaries hereinafter designated. (Added, 1967.)

**Sec. 190.02. Definitions.**

For the purposes of this Article and as used in the definitions hereunder, the following words and phrases shall have the meaning ascribed to them in this section, respectively, unless a different meaning is clearly indicated by the context.

- (a) "Shall" is mandatory and "may" is permissive.
- (b) Words of the masculine gender include the feminine gender and words of the feminine gender include the masculine gender.
- (c) "City" means the City of Los Angeles.
- (d) "Board" means the Board of Pension Commissioners referred to in Article XVII of this Charter.
- (e) "Member of the Fire Department" means a person duly and regularly appointed in the Fire Department, under civil service rules and regulations or provisions of this Charter, or both, governing the making of original regular and permanent appointments therein which require the serving of probationary periods but not of original emergency or temporary appointments therein, to perform duties as a fireman for the City, under whatever designation such person may be described in any salary

or departmental ordinance providing salaries for the members of said department, provided, however, that such person shall be a member of said department only until his status as such shall be terminated by reason of his retirement, resignation or discharge therefrom or for any other reason.

(f) "Member of the Police Department" means a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of this Charter, or both, governing the making of original regular and permanent appointments therein which require the serving of probationary periods but not of original emergency or temporary appointments therein and sworn in, as provided by law, to perform duties as a police officer for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of said department, provided, however, that such person shall be a member of said department only until his status as such shall be terminated by reason of his retirement, resignation or discharge therefrom or for any other reason.

(g) "Department Member" means a person who is a member of the Fire Department or of the Police Department.

(h) "System Member" means a person who is a Department Member and whose pension rights and benefits are governed by this Article and not by Article XVII of this Charter.

(i) "Retired Member" means a person who is a former System Member whose active status as a Department Member had been terminated and who is receiving a pension pursuant to this Article.

(j) "Qualified Surviving Spouse" means a person who is the widow or widower of a deceased System Member or Retired Member who had been married (1) to the System Member for at least one year prior to the date of his or her nonservice-connected death while a System Member, or (2) to the System Member as of the date of his or her service-connected death while a System Member, or (3) to the Retired Member for at least one year prior to the effective date of his or her retirement upon a service pension or upon a nonservice-connected disability pension pursuant, respectively, to Section 190.11 or Section 190.12(b), or (4) to the Retired Member as of the effective date of his or her retirement upon a service-connected disability pension pursuant to Section 190.12(a), provided, however, that such person shall be a qualified surviving spouse only until he or she shall marry or die, whichever shall first occur. (Amended, 1967.)

(k) "Minor Child" means a person, but not including a person who is an illegitimate child or a deceased System Member or Retired Member who had not been legitimized by such member, who is a legitimate child, a legitimized child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is under the age of 18 years and who is not married, provided, however, that such person shall be a minor child only until he shall be adopted by a person of the same gender as such member, shall attain the age of 18 years or shall marry, whichever shall be the earlier. (Added, 1967.)

(l) "Dependent Child" means a person, but not including a person who is an illegitimate child of a deceased System Member or Retired Member who had not been legitimized by such member, who is a legitimate child, a

legitimatized child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is not married and who, while under the age of 21 years, had become disabled, either prior or subsequent to the date of death of such member, from earning a livelihood for any cause or reason whatsoever, other than by reason of his own moral turpitude or as a result thereof, provided, however, that such person shall be a dependent child only until he: (1) shall be adopted by a person of the same gender as such member or shall marry, whichever shall be the earlier, regardless of his age at the time of the occurrence of either such event and whether or not he then is disabled from earning a livelihood; or (2) shall attain the age of 18 years if neither of the events mentioned in (1) had occurred prior thereto and if, at that time, he is not disabled from earning a livelihood; or (3) shall cease to be disabled from earning a livelihood if none of the events mentioned in (1) and (2) had occurred prior thereto. (Added, 1967.)

(m) "Dependent Parent" means a person who is a natural parent of a deceased System Member or Retired Member who was domiciled in the United States as of the date of death of such member and to or for whom such member, during at least 1 year immediately preceding his death, contributed  $\frac{1}{2}$  or more of such person's necessary living expenses and who is unable to pay such expenses without the receipt of a pension, provided, however, that such person shall be a dependent parent only until he shall be able to pay his necessary living expenses. (Added, 1967.)

(n) "Beneficiary" means a person, whether or not included in the foregoing definitions, who is receiving a pension pursuant to this Article. (Added, 1967.)

(o) "Permanent Rank" means the rank or the position within the rank which shall be held, upon a permanent basis under applicable civil service rules and regulations or provisions of this Charter, or both, by the System Member immediately preceding the termination of his status as a Department Member, but does not mean any higher rank or any position within any higher rank in which the System Member then may be serving or theretofore may have served either a portion of a probationary period or pursuant to an emergency or temporary appointment therein. (Added, 1967.)

(p) "Monthly Salary" means the gross monthly salary or  $\frac{1}{12}$  of the gross annual salary which shall be provided by ordinance for the System Member's permanent rank as of the date of the termination of his status as a Department Member excluding, however, length of service pay, special pay and hazard pay as hereinafter defined. (Added, 1967.)

(q) "Length of Service Pay" means any additional gross monthly pay or  $\frac{1}{12}$  of any additional gross annual pay which, by reason of length of service, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member. (Added, 1967.)

(q-2) "Special Pay" means any additional gross monthly pay or  $\frac{1}{12}$  of any additional gross annual pay which, by reason of assignment to perform special duties other than hazardous duties, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member. (Added, 1967.)

(r) "Hazard Pay" means any additional gross monthly pay or  $\frac{1}{12}$  of any additional gross annual pay which, by reason of assignment to perform helicopter duties, two-wheel motorcycle duties or any other hazardous duties, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member. (Added, 1967.)

(r-2) "Assignment Pay" means any additional gross monthly pay or  $\frac{1}{12}$  of any additional gross annual pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the System Member's permanent rank, shall be provided therefor by ordinance, upon the conditions therein set forth, as of the date of the termination of such System Member's status as a Department Member. (Added, 1971.)

Any such assignment pay shall not be included in the sum of any System Member's Nonservice-Connected Pension Base but hereafter shall be included in the sum of his Normal Pension Base to the same extent and upon the same conditions as any hazard pay shall be included therein. (Added, 1971.)

The provisions of Subsection(s) of this section and each section, subsection, paragraph and subparagraph of this Article wherein the words "Normal Pension Base" are used hereafter shall be construed and applied in accordance with the provisions of this subsection. (Added, 1971.)

(s) "Normal Pension Base" of any System Member means the sum of: (1) his monthly salary; (2) any length of service pay which he had received immediately preced-

ing the date of his retirement or death or upon the last day he had performed duties as a Department Member; (3) any special pay which he had received immediately preceding the date of his retirement or death or upon the last day he had performed duties as a Department Member; and (4) any hazard pay which he had received immediately preceding the date of his retirement or death or upon the last day he had performed duties as a Department Member or, if he had not received the same at either such time but had received such pay at some time prior thereto, 10% of the hazard pay which he had received at the time of the termination of his last assignment to hazardous duties for each year in the aggregate of his assignment to any hazardous duties not exceeding, however, 10 years in the aggregate. (Amended, 1967.)

Notwithstanding any of the foregoing, if a Retired Member were to be restored to active duty as a Department Member and thereby again were to become a System Member and if he again were to retire or to be retired without having performed his duties for at least 1 year subsequent to such restoration, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him prior to such restoration, the Normal Pension Base which shall be applicable to his later retirement shall be the Normal Pension Base which had been applicable to his previous retirement. (Added, 1967.)

(t) "Nonservice-Connected Pension Base" of any System Member means the sum of: (1) the highest monthly salary provided, as of the date of the System Member's retirement or death, whichever shall first occur, for a Department Member then holding the basic rank of fireman or policeman; and (2) the highest length of service

pay provided, as of the date of the System Member's retirement or death, whichever shall first occur, for a Department Member then holding either of said basic ranks. (Amended, 1967.)

(u) "Year" means a period of 12 months or, in aggregating partial years for purposes of determining years of service, means 365 days. (Added, 1967.)

(v) "Years of Service" means and includes only those periods during or for which the System Member as a Department Member of the Fire Department or of the Police Department, or of both, and whether prior or subsequent to his becoming a System Member: (1) did or shall receive salary, whether in full or reduced amounts thereof; (2) did or shall receive either a service-connected disability pension or a non-service-connected disability pension, whether pursuant to Article XVII of this Charter or pursuant to this Article, provided, however, that he was or shall be restored to active duty as a Department Member and did or shall perform his duties as such for at least 1 year prior to again retiring or being retired pursuant to this Article, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him prior to such restoration; (3) is or shall become entitled, under any provision of general law or ordinance of the City, to credit toward retirement for periods of military service or military leave; (4) did or shall receive workman's compensation benefits for temporary disability on account of any injury or illness arising out of and in the course of employment; and (5) is or shall become entitled pursuant to any ordinance of the City. (Added, 1967.)

In computing years of service, all partial years shall be aggregated but, after the aggregation thereof, any re-

maining partial year shall be disregarded in the computation of any pension. (Added, 1967.)

(v-2) "Partial Year of Service" means any period mentioned in Subsection (v) of this section which is less than 12 months. (Added, 1971.)

Any such partial year of service shall be calculated from the end of the member's last completed year of service to the end of the payroll period immediately prior to the date of his retirement and shall be counted as part of a System Member's years of service for his retirement upon a service pension hereafter granted or for a pension hereafter granted to his qualified surviving spouse, minor child or children, dependent child or children or dependent parent or parents if he hereafter shall die while upon a service pension hereafter granted or while eligible for a service pension. (Added, 1971.)

Any such partial year of service, in the case of a System Member who shall have had less than 25 years of service, shall be credited in the same ratio of 2% of his Normal Pension Base as such partial year shall bear to a complete year and, in the case of a System member who shall have had 25 years of service or more, shall be credited in the same ratio of 3% of his Normal Pension Base as such partial year shall bear to a complete year. (Added, 1971.)

The provisions of Subsection (v) of this section Section 190.11, Subparagraph (m) of Paragraph (4) of Subsection (A) of Section 190.111, Subsection (a) of Section 190.12 and Paragraphs (5) and (6) of Subsection (a) and Subsections (b) and (c) of Section 190.13 hereafter shall be construed and applied in accordance with the provisions of this subsection. (Added, 1971.)

**Sec. 190.021. Persons Not Entitled to Pensions.**

Any person deputized or appointed as a reserve or an auxiliary policeman, police officer or peace officer of the City of Los Angeles to perform police duties or functions upon a part-time basis; (1) shall not be and shall not be deemed to be or to have been a Member of the Police Department or a Department Member or a System Member, as respectively defined in Section 190.02, for any of the purposes of this Article; (2) shall not be entitled, and his surviving spouse and any of his surviving minor children or dependent children or dependent parents shall not be entitled, to the payment of any pension provided for in this Article; and (3) shall not have any deductions made for pension purposes from any moneys which shall be paid to him by said City or said department. (Added, 1968.)

**Sec. 190.03. System Members.**

Each person who shall be appointed as a Department Member on or subsequent to the effective date of this Article shall become a System Member as of the effective date of such appointment. Each person who was appointed as a Department Member prior to the effective date of this Article shall become a System Member as of the date upon which a request therefor shall be filed as provided by Section 190.04. In no event shall any other person become a System Member. (Added, 1967.)

**Sec. 190.04. Request to Become A System Member.**

Each Department Member who was appointed as such prior to the effective date of this Article shall have the right to become a System Member and may exercise such right only by filing a request therefor with the Board or in the office of the Board within 1 year immediately following the effective date of this Article, except as is hereinaf-

ter otherwise provided. Each such Department Member who shall be serving in the armed forces of the United States as of such effective date and who thereafter shall return to active duty as a Department Member, within the time required for job rights and other benefits, may exercise such right only by filing a request therefor with the Board or in the office of the Board within 1 year immediately following such effective date or within 90 days immediately following such return to active duty, whichever shall be the later. Each person who shall be receiving a disability pension pursuant to Section 182 or to Section 182¼ of Article XVII of this Charter as of such effective date and who thereafter shall be restored to active duty as a Department Member may exercise such right only by filing a request therefor with the Board or in the office of the Board within 1 year immediately following such effective date or within 90 days immediately following such restoration to active duty, whichever shall be the later. The legally appointed, qualified and acting guardian of the estate of any such Department Member may exercise such right for and on behalf of the Department Member only by filing a request therefor with the Board or in the office of the Board within 1 year immediately following such effective date, provided, however, that Court approval therefor first shall have been obtained. (Added, 1967.)

The Board, for good cause and in its discretion, may extend the time within which any such Department Member or the guardian of the estate of any such Department Member may file such a request, whether the applicable period hereinabove prescribed therefor shall have or shall not have elapsed, and may impose whatever terms and conditions which it shall deem to be reasonable and just for the giving of any such extension of time. (Added, 1967.)

Each such request shall be in writing, shall be signed by such Department Member or by the legally appointed, qualified and acting guardian of the estate of such Department Member, shall contain his full and complete waiver of any and all present and future pension rights and benefits provided by Article XVII of this Charter, including derivative rights and benefits for widows and other beneficiaries, shall contain his full and complete release, discharge and acquittance of the City and the Board of and from any and all present and future liabilities for the payment of any such benefits pursuant to said Article XVII and shall contain his election to become a System Member. The contents of such request need not be restricted to the aforementioned items and such request may include any and all provisions which the Board and the City Attorney may deem to be necessary or desirable to effectuate such full and complete release, discharge and acquittance by each such member of the City and the Board of and from any and all present and future liabilities for the payment of any such benefits pursuant to said Article XVII, and the Board, after the effective date of this Article, shall have the power and authority to expend moneys for the preparation of such requests and for the distribution thereof to such Department Members. (Amended, 1967.)

Each such request, whether signed by such Department Member or by the guardian of his estate, shall be signed by the spouse of such Department Member whereby he or she shall freely and voluntarily join in and consent to everything contained therein with the same force and effect as if he or she had signed the same as a member, and such request, when so signed, shall be both effective and irrevocable upon the filing thereof with the Board or in the office of the Board. However, the Board, in its discretion but only upon the written request therefor by

the particular Department Member involved, may waive the requirement that the request hereinabove mentioned shall be signed by the spouse of such Department Member, except in the case of any Department Member who was appointed as a member of the Fire Department or of the Police Department prior to January 17, 1927, and such request, when signed by the Department Member or the guardian of his estate, shall be both effective and irrevocable upon the filing thereof with the Board or in the office of the Board subsequent to but not prior to the Board's action waiving said requirement. (Added, 1967.)

Sec. 190.041. Request By a Reactivated Member Under Article XVII to Become a System Member.

A reactivated member under Article XVII who, subsequent to the effective date of his return to active duty shall have had five years of service as defined in Subparagraph (c) of Paragraph (4) of Subsection (A) of Section 181.1, shall have the right, pursuant to Section 190.04, to become a System Member under this Article, provided, however, that he may exercise such right only within the one year from and after the date upon which he shall have completed such five years of service. Any such reactivated member who shall become a System Member also shall become a reactivated member under this Article.

Section 190.04 hereafter shall be construed and applied as to a reactivated member under Article XVII, in accordance with this section. (Sec. added, 1969.)

Sec. 190.05. Administration.

The New System shall be under the exclusive management and control of the Board which, in its exercise thereof, shall make use of the same facilities which it uses or shall use to administer the Fire and Police Pension System provided by Article XVII of this Charter. In the

discretion of the Board, the position of general manager of the Department of Pensions and the position of secretary to the Board may be consolidated. The Board shall keep in convenient form, in addition to its other records and accounts, such information and data as shall or may be necessary or desirable for the making of the actuarial valuations and investigations which are required for the purposes of this Article. (Amended, 1967.)

The Board shall have the power and authority to prescribe the various forms which shall be used with respect to any of the provisions of this Article, and to adopt any rules and regulations to effectuate the purposes of this Article which it, in its discretion, may deem to be necessary or desirable. (Added, 1967.)

Each action of the Board, whether by order, motion, resolution or otherwise, shall be adopted by a vote of at least 3 of its members but never by a vote of 2 of its members out of a mere quorum of 3 of its members, except as is provided in Section 190.07 for the unanimous vote of all 5 members thereof. (Amended 1967.)

Sec. 190.06. Funds of the New System.

Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Article, certain other benefits as may be authorized from time to time pursuant to the enabling provisions of Section 190.50 of this Article and for the payment of the administrative expenses of the New System and of the Fire and Police Pension System provided by Article XVII of this Charter, one of which shall be known as the "New System Service Pension Fund" and the other of which shall be known as the "New System General Pension Fund". (Amended, 1974.)

The New System Service Pension Fund shall consist of:  
(Added, 1967.)

(a) Deductions made, pursuant to Section 190.10, from the salaries of System Members; (Added, 1967.)

(b) All contributions and donations to the Fire Department or to the Police Department for services by any System Members, except amounts of money donated to provide for any medal or permanent competitive award; (Added, 1967.)

(c) All fines imposed upon System Members for violations of rules and regulations of the respective department in which they are Department Members; (Added, 1967.)

(d) All proceeds from the sale of unclaimed property; and (Added, 1967.)

(e) All interest, earnings and profits resulting from investments of such moneys. (Added, 1967.)

The New System General Pension Fund shall consist of:

(a) All receipts from taxes levied pursuant to Section 190.09; (Added, 1967.)

(b) All moneys appropriated thereto by the Council of the City; and (Added, 1967.)

(c) All interest, earnings and profits resulting from investments of such moneys. (Added, 1967.)

The moneys in the New System Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 190.11. The moneys in the New System General Pension Fund shall be used, other than for the investment thereof and except as hereinafter in

this immediate paragraph specifically provided, exclusively for the payment of all pensions other than service pensions, such benefits as may be provided by ordinance adopted pursuant to the provisions of Section 190.50 of this Article and of all administrative expenses of the New System and of the Fire and Police Pension System provided by Article XVII of this Charter. In the event that the moneys in the New System Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have the power and authority to cause the Controller of the City to transfer to said fund sufficient moneys therefor from the New System General Pension Fund. In no other event shall any of the moneys in either of said funds be commingled with any of the moneys in the other of said funds, whether as moneys or cash on deposit or as moneys invested. In the event that the moneys in the Fire and Police Service Pension Fund or in the Fire and Police General Pension Fund, created and established by Article XVII of this Charter, should be insufficient, at any time, to pay all pensions or other benefits which are payable therefrom, respectively, then the Board shall have the power and authority to cause the Controller of the City to transfer to either of said funds sufficient moneys therefor from the New System General Pension Fund. Neither the New System Service Pension Fund nor the New System General Pension Fund shall be a trust fund for any purpose, and the obligations to pay benefits pursuant to this Article shall be general obligations of the City. (Amended, 1974.)

Sec. 190.07. Investments.

The Board shall manage and administer the New System Service Pension Fund and the New System General Pension Fund and shall invest the assets of those Funds subject to the limitations contained in this section. In

investing in real property the Board shall comply with the requirements for obtaining advice from appraisers and advisors otherwise whenever the Board shall have determined that it would be in the best interest of the New System, the Board may, in its discretion, appoint persons including, but not limited to the Board's investment counselors or advisors, or contract the services to assist the Board and may delegate authority to such persons within guidelines established by the Board with respect to such investment activities as are authorized by this section, including transactions necessary in conjunction with such investment activities. (Amended, 1985.)

The Board shall establish methods for the valuation of its assets for the purpose of adhering to the investment limitations set forth herein.

The moneys in the funds of the New System shall be kept on deposit in the City Treasury or be invested as hereinafter provided.

The Board shall adopt rules and regulations, and may change, amend or repeal the same, with respect to its investment policies, which, however, shall be subject to the limitations contained in this section and not inconsistent with the provisions thereof and shall have authority over the administration and investment of the funds and notwithstanding anything in this Charter to the contrary, the procedures to be followed in connection with such investment, including, within guidelines established by said Board, all matters relating to the purchase, sale, payment for, transfer, exchange, registration, delivery, receipt, custody and service of securities acquired by such funds, including holding securities on behalf of the Board for the purpose of safekeeping and lending of securities. All securities and other documents purchased or otherwise obtained by reason of transactions made by the

Board pursuant to the provisions of this section, regardless of the form, description or legal effect of any of the same, may, at the sole discretion of the Board, be placed in either the custody of the City Treasurer or one or more qualified custodians to act as agent or agents of the Board.

All percentage limitations for investments in any investment category referred to in this section shall be applicable only as of the date an investment is made and shall not be a limitation for any other purposes.

The Board shall retain one or more competent investment advisors, and shall invest the moneys of the New System, including the purchase, sale or exchange of securities, only upon the recommendation or advice of at least one of said advisors. Each investment advisor retained must be registered under the Investment Advisors Act of 1940 or any successor legislation thereto; or must be either a bank, as defined in that Act, or an insurance company qualified to perform the services of an investment advisor. The Board may purchase and sell United States Treasury bills without obtaining the recommendation of any of its investment advisors. (Amended, 1984.)

Authority to Invest in Equity-type Securities and to Enter into Transactions Involving Equities.

The Board, upon the terms and conditions and within the limitations hereunder set forth, may invest up to but not exceeding seventy percent of the assets of the funds of the New System in equity-type securities such as common stocks, preferred stocks, convertible preferred stocks, and convertible bonds and debentures, but not limited thereto, as more specifically provided in this section. Except as otherwise herein provided, common stocks to be eligible for investment must be registered on

a national securities exchange as provided in the Federal Securities Exchange Act, any amendment thereto and any subsequent legislation in place thereof, except for common stocks of banks which are members of the Federal Deposit Insurance Corporation or any successor thereof, and insurance companies. Furthermore, the corporation issuing such stock must have paid a dividend on its common stock in each of the 5 fiscal years next preceding the date of investment, provided, that if such corporation acquired its property or assets or any substantial portion thereof within such period by consolidation or merger with, or by purchase or otherwise from any other corporation or unincorporated business enterprise, the dividends of the several predecessor or constituent corporations or enterprises may be consolidated and adjusted in accordance with generally accepted accounting principles in order to ascertain whether such requirements have been met. Except as provided in the following paragraph, any preferred stock, convertible preferred stock or convertible bond or debenture shall be eligible for investment by the Board only if the common stock of the issuing corporation is eligible for investment under the terms of this paragraph.

Twenty-five percent of those assets of the funds invested in equity-type securities may be invested in common stocks, preferred stocks, convertible preferred stocks, and convertible bonds and debentures, irrespective of whether the common stock of the respective corporation is eligible for investment under the terms of the preceding paragraph.

Not more than 2% of the assets of the funds shall be invested in the common stock of a single corporation nor shall the total number of shares of common stock held in any single corporation by the funds exceed 5% of the

issued and outstanding shares of common stock of such corporation.

The Board shall have the authority to participate in securities lending transactions with respect to its equity-type securities.

The Board may participate in option transactions by the writing of covered call option contracts that are listed on a national securities exchange and the termination of such contracts by repurchase.

#### Fiduciary Standards.

The management and administration of the New System and of the assets of each Fund shall be in the interest of, and for the exclusive purpose of, providing benefits to the New System Members, Retired Members and Beneficiaries. The Board, its members and its employees shall perform their duties with care, skill, prudence and diligence of a prudent person in the capacity, and familiar with the conduct of a like enterprise with like aims, including, but not limited to diversifying investments, all as more particularly described in subsections (a) through (d) of Article XVI section 17 of the California Constitution, as amended June 5, 1984. (Amended, 1985.)

#### Authority to Invest in Debt-type Securities and to Enter into Transactions Involving Debt-type Securities.

The Board may invest one hundred percent of the assets of the funds in debt-type securities, such as bonds or debentures but not limited thereto, which, at the date of investment, shall be rated, either provisionally or finally, within the three highest classifications established by at least two standard rating services or which then shall be legal for investment by commercial banks or public retirement systems in the State of California.

Notwithstanding the provisions of the preceding paragraph, the Board may invest up to but not exceeding twenty percent of the assets of the funds, in debt-type securities such as bonds or debentures but not limited thereto, in which in the informed opinion of the Board it is prudent to invest retirement funds.

The Board may invest up to thirty-five percent of the assets of the funds in short-term money market instruments such as certificates of deposit, commercial paper, bankers' acceptances and repurchase agreements but not limited thereto, in which in the informed opinion of the Board it is prudent to invest retirement funds. A "short-term" money market instrument shall be understood to mean one which matures within one year of the date of purchase. The provisions contained in this paragraph shall not be a limitation on the Board's authority to invest the assets of the funds in United States Treasury bills and federal government agency securities.

The Board shall have the authority to participate in securities lending transactions with respect to its debt-type investment securities. (Sec. Amended, 1981.)

Investment in Real Property for Lease to the City of Los Angeles.

The Board may invest up to but not exceeding ten percent of each Fund, determined on a cost basis, in real property in the City of Los Angeles, provided, however, that any such investment shall yield at least  $\frac{1}{2}\%$  or more than shall be the yield, at the time of the making of the investment, on long-term bonds of the United States Government. No such investment shall be made unless it shall be authorized by an order, motion or resolution adopted by all 7 members, and never less than all 7 members, of the Board. Except as hereinabove provided,

the Board may make any such investment only for the same purposes, upon the same terms and conditions, and within the same limitations, except as hereunder provided, contained therefor, with respect to County Employees' Retirement Systems, in Sections 31601, 31602(a), 31604, 31604.1, 31605 and 31606 of the California Government Code as of the effective date of this section. For the purposes hereof, the words "the Board", "the Board of Supervisors of the County" and "the County," as used in said code sections, shall have substituted for them, respectively, the words, "the Board of Pension Commissioners," "the City Council" and "the City". In applying the provisions of the code sections to any investment authorized thereunder, the rate prescribed in Section 31603 of the California Government Code, as referred to in said Section 31604, shall not be applicable and, in lieu thereof, the rate of yield hereinabove provided shall be applicable, the rate prescribed in Section 31591 of the California Government Code, as referred to in said Section 31604, shall not be applicable and, in lieu thereof, the assumed rate of interest per annum as provided in Section 186.1 or as established by the Board pursuant to the provisions thereof shall be applicable; and the four-fifths vote of approval by the members of the Board of Supervisors of the County, as provided in Section 31601, shall not be applicable but, in lieu thereof, any such authorized investment shall be approved by an ordinance adopted by a two-thirds vote of the members of the City Council with the approval of the Mayor or by a three-fourths vote of the members of the City Council over the veto of the Mayor. (Amended, 1985.)

#### Real Property.

The Board may invest in real property and interests in real property up to a total investment therein of not to

exceed twenty percent of the New System's total assets, calculated at the time of investment. Such an investment may be an acquisition of real property or of undivided interests therein, including limited partnership interests, or may be the making or the acquisition of loans secured by first mortgages or first deeds of trust on real property.

The Board shall act by majority vote of all its members on any purchase or sale of real property, provided that the purchase of real property must include the affirmative vote of at least one of the duly elected employee members of the Board.

In addition, the Board may invest up to but not exceeding fifteen percent of each Fund, determined on a cost basis, in private bonds or notes secured by first mortgages or deeds of trust, provided, however, that payment of the principal amount of any such bond or note shall be insured or guaranteed by an agency of the United States Government.

Notwithstanding Sections 393 and 423 of this Charter, title to such real property or interests therein shall be held in the name "Board of Pension Commissioners of the City of Los Angeles," and such real property or interests therein may thereafter be sold, leased, rented, or encumbered on the authority of the Board.

No more than five percent of the total assets, calculated at the time of investment, shall be invested in any one real property. If an investment is made in a real estate investment pool which may invest in more than one real property, no more than five percent of the total assets, calculated at time of investment, shall be invested in any one such investment pool.

The Board shall adopt and may amend from time to time as desirable, subject to limitations of this Article, a

written policy as to investments in real property. Such policy shall include provisions describing the objectives of real property investments, the maximum amounts or percentages which may be invested in individual real properties or types of real property investments, requirements for diversification of such investments, and criteria for selecting advisors and appraisers.

No purchase, sale or exchange of an interest in real property or interests therein may be made under the authority provided by this subsection unless it has been recommended by one or more qualified, independent real estate advisors. Such recommendation shall include the opinion of a qualified appraiser as to fair market value, except for investments in investment pools. Any fee of such advisor or appraiser shall not be dependent upon the purchase, sale, or exchange, or upon the consideration to be paid, nor shall such advisor or appraiser have or obtain a direct or indirect interest in the real property.

Income received from any real properties or interests therein may be placed, at the sole discretion of the Board, in either the custody of the City Treasurer or one or more custodians or agents. The Board may authorize such custodians or agents to pay operating expenses of real properties from such income. The Board may additionally place funds under its control in custody of such custodians or agents for the purpose of paying operating expenses. (Amended, 1985.)

Sec. 190.071. (Repealed, 1981.)

Sec. 190.072. Board Actions.

Prior to the time that the Board shall consist of 7 members, as provided by Section 70.1, each of its actions shall be adopted as provided by Section 190.05 or Section 190.07.

Subsequent to the time that the Board shall consist of 7 members, each of its actions shall be adopted, except as hereinafter provided, by a vote of at least 4 of its members but never by a vote of 3 of its members out of a mere quorum of 4 of its members and, from and after such time, the Board shall not make any investment in real property unless it shall be authorized by an order, motion or resolution adopted by all 7 members, and never less than all 7 members, of the Board.

The provisions of Sections 190.05 and 190.07 hereafter shall be construed and applied in accordance with the provisions of this section (Sec. added. 197 .)

Sec. 190.08. Actuarial Standards.

The New System shall be maintained on a reverse basis which, for the purposes of this Article, shall mean one which provides for the accumulation and maintenance of the New System Service Pension Fund and the New System General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the moneys to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of moneys with which they are to be paid in accordance with the provisions of Sections 190.09 and 190.10.

The Board, as soon as it may deem it to be practicable after the effective date of this Article but prior to the beginning of the fiscal year 1967-1968 and in time for its use in preparing its annual budget for said year, shall secure an actuarial valuation showing the cost of main-

taining said system and funds on such reserve basis and, at intervals of not to exceed 5 years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the System Members and other beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of said funds.

The assumed rate of interest with respect to the fiscal year 1967-1968 and to the first actuarial valuation shall be 4% per annum. Thereafter, the Board, from time to time and with the advice of the investment counsel, shall establish such rate as in its judgment seems proper in the light of the experience and prospective earnings on the investments of said funds.

Said Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies and reports on the required investigations and valuations.

With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, shall provide by rule for the manner and to the extent to which any unrealized profits or losses in the equity-type investments of the funds shall be taken into account. (Sec. added, 1967.)

#### Sec. 190.09. Budget.

The Board annually shall prepare and transmit to the Mayor, the Council and the Controller a budget setting forth the estimated cost of maintaining the New System Service Pension Fund and the New System General Pension Fund, which said budget shall include therein separate items as follows: (Amended, 1967.)

(1) A sum equal to that percentage of the salaries of all System Members shown in the last rendered actuarial valuation to be required to cover the entry age cost to be

paid by the City on account of new System Member entrants into the New System, said entry age cost being defined as the level percentage of salary of new System Member entrants which must be paid into the New System General Pension Fund from their respective dates of entry in order to provide the benefits pursuant to this Article, less the deductions to be made from the salaries of such new entrants, while they are System Members, as provided by Section 190.10; provided, however, that the Board shall include in its budget for the fiscal year 1967-1968 a sum equal to 7.55% of the estimated total payrolls, for said year, of the Fire Department and of the Police Department for all members of said departments. (Added, 1967.)

(2) A sum equal to that percentage of the aggregate salaries of all members of the Fire Department and of the Police Department who are included under the provisions of Article XVII, XVIII, or XXXV of this Charter, as shown in the last rendered actuarial valuation required to amortize the unfunded liabilities of the New System, which sum will remain level as a percentage of salary, but which will increase in dollar amount in accordance with the aggregate salary increase assumption. Unfunded liabilities are defined as the present value of all of the assumed obligations of the system less (a) the present value of the future contributions to be made by the City pursuant to the preceding subsection, (b) the present value of the deductions to be made from the salaries of the System Members and (c) the assets of the New System Service Pension Fund and of the New System General Pension Fund. The amortization period shall be 70 years beginning with the fiscal year 1967-68, provided, however, that the Board shall assume that the unfunded liabilities of the New System shall be \$258,000,000.00 as of July 1, 1967, and shall include in its budget for the

fiscal year 1967-1968 sum equal to 12.65% of the estimated total payrolls, for said year, of the Fire Department and of the Police Department for all members of said departments. (Amended, 1984.)

(3) A sum sufficient to cover the cost as determined by an actuarial estimate, of benefits granted by the City Council under the authority of Section 190.50 of this Article. (Amended, 1984.)

(4) Administrative expenses of the New System and of the Fire and Police Pension System provided by Article XVII of this Charter. (Amended, 1974.)

For the purpose of providing funds to meet the budget of said New System and of its New System Service Pension Fund and its New System General Pension Fund the Council or the Controller annually shall levy, in addition to all other taxes levied by the City, a tax clearly sufficient to provide the total amount of all items in said budget. (Added, 1967).

#### Sec. 190.10. Contributions of System Members.

Deductions shall be made from the salaries of System Members, and such deductions shall be deposited to the credit of and paid into the New System Service Pension Fund, all as hereinafter provided in this Section; provided, however, that no further such deductions shall be made from the salaries of System Members who have completed thirty years of service. (Amended, 1983.)

The administrative head of the Fire Department and of the Police Department shall cause to be shown on each

and every payroll of such department a deduction equal to the sum of the following items:

(1) 6% of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon; and

(2) That percentage of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon, but not to exceed 1% thereof, which shall be equal to  $\frac{1}{2}$  of the cost of the cost of living benefits provided in this Article as shall be determined by the Board upon an actuarial valuation obtained by it pursuant to Section 190.08.

The Board, from time to time, shall certify in writing to the administrative head of each such department and to the Controller any change in the deductions to be made pursuant to (2) above, and any such change shall become effective as of the next following July 1.

The administrative head of each such department shall certify to the Controller on each such payroll the amount to be deducted from the salary of each System Member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board for the total amount of deductions from the salaries of such System Members as shown on each payroll of such department, and the Board shall deposit said payroll check to the credit of the New System Service Pension Fund. It shall be the duty of the administrative head of each such department to cause to be furnished to the Board a copy of each and every such payroll.

Each System Member shall be deemed to consent and agree to each deduction as provided herein, and the payment of each payroll check to such System Member shall be a full and complete discharge and acquittance of

all claims and demands whatsoever for the services rendered by such System Member during the period covered by each such payroll check, except such claims as such System Member may have to the benefits or payments provided by this Article. Every person who is a System Member on July 1, 1982 shall, upon termination of employment, be entitled to a refund of contributions made by him or her pursuant to the provisions of this Section. A person not a System Member on July 1, 1982 and whose employment terminated prior to said date, shall not be entitled to a refund of contributions made by him or her during periods of membership prior to said July 1, 1982.

The refund of contributions shall be subject to the following conditions and limitations:

Upon termination of employment as a Department Member for any reason except retirement pursuant to the provisions of this Article, a System Member shall be entitled to have refunded to him or her all contributions made by such System Member to the New System Service Pension Fund prior to the effective date of this Section, plus 6% interest per annum on such contributions calculated in the same manner as if interest had regularly been credited to the System Member's contributions, compounded as of the last day of the last pay period of December and to the end of the last pay period preceding the effective date of termination of employment.

Starting July 1, 1982, the Board shall maintain an individual account of the contributions by each System Member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year after July 1, 1982, at such rate as the Board may deem proper in light of the earnings of the funds of the New Pension System, exclusive of profits and losses on principal heretofore or here-

after resulting from sales of securities. No such interest shall be credited at any other time; provided, however, that such interest shall be credited to the individual account of a System Member whose employment is terminated for any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to System Member's individual accounts. Should a System Member entitled to a refund of contributions fail to demand payment thereof within ten (10) years from the date of termination of employment of the System Member, said contributions shall be transferred to such reserve account or accounts of the New Pension System as the Board, in its sole discretion, may determine and, thereafter, any action or proceeding to enforce payment thereof to any such former System Member or his or her estate shall be forever barred.

System Members who elect to receive a refund of contributions, forfeit the right to benefits provided in this Article. After payment of any pension benefit has commenced, said System Member forfeits the right to a refund of the System Member's contributions. System Members who return to active duty from a disability pension may not thereafter have contributions made by them prior to their retirement on such disability pension refunded. A terminated System Member who had elected to have contributions returned, but who reenters service and again becomes a System Member shall, notwithstanding any provision of this Article to the contrary, not be entitled to credit for years of service previously earned unless he or she shall first have repaid the amount of contributions and interest and an amount calculated as interest which would have been earned between the date

of original termination of status as a System Member and the date of reentry into service as a Department Member.

System Members shall have the right to designate persons who shall be entitled to receive monies to which a System Member would otherwise be entitled upon termination of employment, to be payable to such designated person or persons upon the System Member's death; provided, however, that no such monies shall become payable if any person should be entitled to any other benefit provided in this Article. The Board shall adopt appropriate forms for the designation by System Members of persons who shall be such System Member's beneficiaries. (Title and Section Amended, 1982.)

Sec. 190.105 Overtime Work.

Whenever a System Member, for overtime work, shall take a period of time off with pay: (a) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his Monthly Salary and additional monthly pay if such period had been one of regular work; (b) such pay shall be part of his Monthly Salary and additional monthly pay but only in the same amount as that which would have been his monthly salary and additional monthly pay if such period had been one of regular work; and (c) such period shall be part of his Years of Service. (Added, 1968.)

Whenever a System Member, for overtime work, shall receive a cash payment: (a) a deduction for pension purposes shall not be made from such payment; (b) such payment shall not be part of his Monthly Salary and additional monthly pay; and (c) the period of overtime work for which he shall receive such payment shall not be part of his Years of Service except that any period of a

System Member's overtime work, for which he shall not have taken time off with pay, shall be credited, by the Board of Pension Commissioners, as part of his Years of Service, upon his or his survivor's written request therefor, to the same extent as he would have been entitled to take therefor time off with pay but only to the extent, and not in excess thereof, that he, while a Department Member, shall have had any period of absence from work without pay, provided, however, that such request shall be accompanied with payment of the amount which would have been deducted for pension purposes from his Monthly Salary and additional monthly pay if the period of overtime work, to the extent credited, had been one of regular work. (Added, 1968.)

Sec. 190.11. Service Pension.

Any System Member under the age of 70 years who shall have 20 years of service or more shall be retired by order of the Board from further active duty as a Department Member either (a) upon the filing of his written application therefor or (b) upon the filing of a written request therefor by or on behalf of the head of the department in which he is a Department Member if it shall be determined by the Board to be for the good of such department, other than for a cause or reason which would entitle such System Member to a disability pension pursuant to Section 190.12, and the Board, if it shall so determine, shall state the cause or reason therefor in its order retiring such System Member. After a System Member has attained the age of 70, he shall annually submit to an examination by a regularly licensed, practicing physician selected by the head of his department who shall render a written report to such department as to whether or not the System Member is physically and mentally fit to continue his duties as a Department

Member. If the System Member is found not to be physically and mentally fit to so continue his duties, he shall be retired effective the first day of the calendar month next succeeding that month in which the physician's report was received by the Board. Any such Retired Member shall be paid thereafter and for life a monthly service pension in an amount which shall be equal to a percentage of his Normal Pension Base, to wit: for less than 25 years of service, 2% thereof for each year of service for 25 years of service, 55% thereof and for each year of service over 25 years of service, an additional 3% thereof, not exceeding in all, however, a maximum of 70% thereof, which maximum of 70% shall be applicable regardless of the Retired Member's length of service as a System Member or his age at retirement. No Retired Member, retired pursuant to this section, ever shall be paid any pension pursuant either to subsection (a) or subsection (b) of Section 190.12. (Amended, 1977.)

Sec. 190.111. Return or Recall of Service Pensioners to Active Duty.

(A) (1) A retired member, whenever retired, may file, with the Chief of the department from which he retired, a written application to be returned to active duty therein only upon the conditions: (a) that his original retirement had been pursuant to Section 190.11 and had been (I) from the Fire Department while holding a rank no higher than Engineer or (II) from the Police Department while holding a rank no higher than Sergeant; (b) that, as of the filing date of such application, (I) the period of his original retirement had been no longer than 3 years and (II) he shall be under the age of 55 years; and (c) that he satisfactorily had passed a medical examination not more than 30 days prior to the effective date of his original retirement, provided, however, that the Chief, if the effec-

tive date thereof had been prior to the effective date of this section, may waive the condition contained in this (c).

(2) The Chief may approve any such application only upon the conditions that, subsequent to the filing date thereof, the retired member: (a) had passed a medical examination from which it had been determined that he would be capable of performing the duties which would be assigned to him if he were to be returned to active duty, provided, however, that such determination thereafter had been approved or concurred in by the Board; and (b) had certified, in writing, that he had read and understands the provisions of this section.

(3) The Chief, if he were to approve any such application, may return the retired member to active duty only in or to a vacant position in the rank held by him at the effective date of his original retirement.

(4) Wherever words are used in this Paragraph (4) with respect to any pension granted or to be granted pursuant to any of the first six paragraphs of Subsection (a) of Section 190.13, they also shall mean and include the words, as used in Paragraph (3) of Subsection (b) of Section 190.14, "whether by reason of the provisions thereof or of those of subsection (b) or of subsection (c) of said section, including any additional pension amounts payable pursuant to paragraph (7) of subsection (a) of said section."

A retired member, if he were to be returned to active duty, thereafter shall be known as a "reactivated member" and, as such:

(a) His return to active duty shall be a privilege only, he shall be on probation for one year from and after the effective date thereof regardless of any other provision of

law contained in this Charter or otherwise and the Chief may terminate his service at any time during such year;

(b) His pension, granted by reason of his original retirement, shall be terminated by the Board as of the effective date of his return to active duty;

(c) His service subsequent to the effective date of his return to active duty, for the purposes of this Article and regardless of any other provision of law contained in this Charter or otherwise, shall consist of only (I) the days for which he shall be paid for performing his assigned duties, (II) his days of vacation with pay and (III) his regular days off duty with pay, and one year of such service shall consist of a total of 365 such days;

(d) His aggregate years of service, for the purposes of (I) his eligibility to advancement in accordance with Civil Service rules and regulations and (II) the payment of his salary and longevity pay or merit pay, shall consist of only (i) his years of service prior to the effective date of his original retirement and (ii) his service subsequent to the effective date of his return to active duty;

(e) His aggregate years of service, for the purposes of this Article and regardless of any other provision of law contained in this Charter or otherwise, shall consist only (I) his years of service prior to the effective date of his original retirement and (II) his service subsequent to the effective date of his return to active duty, provided, however, that such service shall be for not less than one year as defined in Subparagraph (c) of this Paragraph (4);

(f) He shall be assumed to have a satisfactory standard of service and shall be paid (I) the salary provided for his rank and (II) the longevity pay or merit pay provided for his aggregate years of service as defined in

Subparagraph (e) of this Paragraph (4), subject, however, to all provisions applicable to the termination of payment of longevity pay or merit pay;

(g) He shall have deductions made for pension purposes, pursuant to Section 190.10, from his salary and longevity pay or merit pay;

(h) He never shall be entitled to a subsequent retirement pursuant to Subsection (b) of Section 190.12 and his surviving spouse, his minor child or children or dependent child or children (hereafter referred to in this Paragraph (4) as "his child") or his dependent parent or parents hereafter referred to in this Paragraph (4) as "his parent") never shall be granted a pension pursuant to Paragraph (2) or Paragraph (4) of Subsection (a) of Section 190.13;

(i) He shall be entitled to a subsequent retirement pursuant to Subsection (a) of Section 190.12 if he were to become eligible therefor and upon his death, if he theretofore had had such a subsequent retirement, a pension shall be granted pursuant to Paragraph (3) of Subsection (a) of Section 190.13 to his surviving spouse, if she shall have been married to him as of the effective date of his subsequent retirement, or to his child or to his parent;

(j) His surviving spouse or his child or his parent, if he were to die while a reactivated member from any cause arising out of or from the performance of his duties, shall be granted a pension pursuant to Paragraph (1) of Subsection (a) of Section 190.13;

(k) His surviving spouse, if she shall have been married to him (I) for at least one year prior to the effective date of his original retirement or (II) for at least one year subsequent to the effective date of his return to active duty and prior to the date of his death, or his child

or his parent, if he were to die while a reactivated member from any cause other than a cause arising out of or from the performance of his duties, shall be granted a pension pursuant to Paragraph (6) of Subsection (a) of Section 190.13;

(l) His pension, granted by reason of his original retirement, if his service were to be terminated during the one year from and after the effective date of his return to active duty for any reason other than by reason of his subsequent retirement pursuant to Subsection (a) of Section 190.12, shall be reinstated by the Board, as of the effective date of the termination of his service, at the amount of pension which then would have been payable to him if he had not returned to active duty and, upon his death, the pension which shall be granted pursuant to Paragraph (5) of Subsection (a) of Section 190.13 to his surviving spouse, if she shall have been married to him for at least one year prior to the effective date of his original retirement, or to his child or to his parent, shall be calculated upon the Normal Pension Base upon which his pension had been calculated as of the effective date of his original retirement; and

(m) He shall be entitled to a subsequent retirement pursuant to Section 190.11, based upon his aggregate years of service as defined in Subparagraph (e) of this Paragraph (4), and his pension shall be calculated upon a sum equal to the Normal Pension Base upon which his pension had been calculated as of the effective date of his original retirement (hereinafter referred to as "such base"), plus a percentage of the difference between such base and that which, if he had not had his original retirement, would have been his Normal Pension Base as of the effective date of his subsequent retirement, for his years of service subsequent to the effective date of his

return to active duty as defined in Subparagraph (c) of this Paragraph (4), so that such sum shall be (I) such base plus 20% of such difference for one such year, (II) such base plus 40% of such difference for two such years, (III) such base plus 60% of such difference for three such years, (IV) such base plus 80% of such difference for four such years and (V) such base plus 100% of such difference for five or more such years or the equivalent of his Normal Pension Base as of the effective date of his subsequent retirement and upon his death, if he theretofore had had such a subsequent retirement, the pension which shall be granted pursuant to Paragraph (5) of Subsection (a) of Section 190.13 to his surviving spouse, if she shall have been married to him (i) for at least one year prior to the effective date of his original retirement or (ii) for at least one year subsequent to the effective date of his return to active duty and prior to the effective date of his subsequent retirement, or to his child or to his parent, shall be calculated upon the sum upon which his pension had been calculated as of the effective date of his subsequent retirement.

(5) The provisions of this Article hereafter shall be construed and applied, as to a reactivated member, his surviving spouse, his child and his parent, in accordance with respectively applicable provisions of Paragraph (4) of this subsection of this section.

(B)(1) The Chief shall promulgate such rules and set such standards as he may deem to be necessary or desirable with respect to recalling a retired member to active duty.

(2) A retired member, whenever retired, shall be eligible to be recalled to active duty in the department from which he retired only upon the conditions: (a) that his original retirement had been pursuant to Section 190.11

and had been (I) from the Fire Department while holding a rank lower than Chief Engineer or (II) from the Police Department while holding a rank lower than Chief of Police; (b) that he had certified, in writing, that he had read and understands the provisions of this section; and (c) that he voluntarily had consented to be recalled to active duty.

(3) The Chief may recall a retired member to active duty: (a) only in or to a vacant position in the rank held by him at the effective date of his original retirement; and (b) for not to exceed 90 days in any one calendar year.

(4) A retired member, if he were to be recalled to active duty, thereafter shall be known as a "recalled member" and, as such:

(a) His recall to active duty shall be a privilege only and the Chief may terminate his service at any time;

(b) His pension shall be paid during the period of his recall to active duty;

(c) He shall be paid (I) the salary provided for his rank and (II) the longevity pay or merit pay provided for his aggregate years of service prior to the effective date of his original retirement;

(d) He shall have no deductions made for pension purposes, pursuant to Section 190.10, from his salary and longevity pay or merit pay; and

(e) He, his surviving spouse, his minor child or children or dependent child or children or his dependent parent or parents never shall be entitled to any pension benefits provided by this Article or Article XVII by reason of his service as a recalled member.

(5) The provisions of this Article hereafter shall be construed and applied, as to a recalled member, his

surviving spouse, his minor child or children or dependent child or children and his dependent parent or parents, in accordance with respectively applicable provisions of Paragraph (4) of this subsection of this section. (Sec. added, 1969.)

Sec. 190.12. Disability Pensions.

(a) Service-Connected Disability. Upon the filing of his written application for a disability pension or upon the filing of a written request therefor by or on behalf of the head of the department in which he is a Department Member, any System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, shall be retired by order of the Board from further active duty as a Department Member. Such Retired Member shall be paid thereafter and for life a monthly service-connected disability pension in an amount which shall be equal to the same percentage of his Normal Pension Base as the Board shall determine, from time to time, to be his percentage of disability. Such pension shall be in an amount not less than 50% and not more than 90% of such Retired Member's Normal Pension Base and not less than that percentage thereof which he, if he shall have had 25 years of service or more at the time of his retirement pursuant to this subsection of this section, would have received had he retired pursuant to Section 190.11, provided, however, that such pension may and shall be reduced, pursuant to Section 190.15, to an amount less than either or both of the aforementioned minimum amounts if the application of said section were to cause such result. Such pension may be terminated only pursuant to subsection (d) of this

section. No Retired Member, while retired pursuant to this subsection of this section, ever shall be paid any pension pursuant either to Section 190.11 or to subsection (b) of this section.

(b) Nonservice-Connected Disability. Upon the filing of his written application for a disability pension by a System Member who shall have 5 years of service or more since the date of his last regular and permanent appointment as a Department Member including his service of the required probationary period, or upon the filing of a written request therefor with respect to such a System Member by or on behalf of the head of the department in which he is a Department Member, any System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, and if the Board further shall determine that such disability was not due to or caused by the moral turpitude of such System Member, shall be retired by order of the Board from further active duty as a Department Member. Such Retired Member shall be paid thereafter and for life a monthly nonservice-connected disability pension in an amount which shall be equal to 40% of his Nonservice-Connected Pension Base. Such pension may be terminated only pursuant to subsection (d) of this section. No Retired Member, while retired pursuant to this subsection of the section, ever shall be paid any pension pursuant either to Section 190.11 or to subsection (a) of this section.

(c) Determination of Disability. Upon the filing of any written application or request for a disability pension, as referred to in subsections (a) and (b) of this section,

the Board: (1) shall cause the System Member to be examined by and a written report thereon rendered by at least three regularly licensed and practicing physicians selected by it; (2) shall hold a hearing with respect to such application or request; and (3) shall receive or hear such other evidence relating to or concerning the System Member's disability or claimed disability as may be presented to it. The Board shall have the power to hear and determine all matters pertaining to the granting and denying of any such application or request for a disability pension. The Board first shall determine whether or not the System Member is incapable of or from performing his duties as a Department Member. If the Board were to determine that he is not so incapable, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that he is so incapable, it then shall determine, pursuant to the language used in subsections (a) and (b) of this section, whether his incapacity or disability is service-connected or non-service-connected. If the Board were to determine that it is service-connected, it then shall determine the percentage of his incapacity or disability, within the limitations prescribed in subsection (a) of this section, and shall grant the application or request accordingly. If the Board were to determine that it is non-service-connected, it then shall determine whether his incapacity or disability was due to or caused by the moral turpitude of the System Member. If the Board were to determine that it was so caused, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that it was not so caused, it shall grant the application or request in the percentage prescribed by subsection (b) of this section. The Board, upon its own motion or upon the written request of any Retired Member, retired pursuant to subsection (a) of this section, shall have the power to

consider new evidence pertaining to the case of any such Retired Member and to increase or decrease the percentage of his incapacity or disability within the limitations prescribed in subsection (a) of this section, provided, however, that any such increase or decrease shall be based only upon injuries or sickness for which he was retired. In the case of any former System Member who became such by reason of his resignation or discharge as a Department Member, the Board, in order to grant any application filed by him for a disability pension, must also determine, in addition to all of the foregoing, that any existing incapacity or disability upon his part occurred prior to the termination of his active status as a Department Member and had been continuous up to the date of the Board's determinations. Any determination of the Board shall be made in writing but need state only the ultimate fact and not any of the evidentiary facts.

(d) Termination of Disability Pensions. The pension of any Retired Member, retired pursuant to subsection (a) or to subsection (b) of this section and whose active status as a Department Member had been terminated by reason of his retirement, shall cease when the incapacity or disability for which he had been retired shall cease and he either: (1) shall have been restored to active duty as a Department Member in the same permanent rank which he had held as of the date of his retirement; or (2) shall have been ordered restored to active duty as a Department Member in such same permanent rank and shall have declined, refused or neglected to report therefor or to perform duties as such. The pension of any Retired Member, retired pursuant to subsection (a) or to subsection (b) of this section and whose active status as a Department Member had been terminated by reason of his resignation or discharge as such, shall cease when the incapacity or disability for which he had been retired

shall cease. The Board shall have the power to hear and determine, upon its own motion or otherwise, all matters pertaining to the terminating of any such pension. Any determination of the Board to terminate any such pension shall be made in writing but need state only the ultimate fact and not any of the evidentiary facts. (Sec., Added, 1967.)

Sec. 190.13. Pensions for Other Beneficiaries.

(a) Pension for Qualified Surviving Spouse.

(1) System Member's Service-Connected Death. The qualified surviving spouse of a System Member who shall die while he is a Department Member, by reason of injuries received or sickness caused by the discharge of his duties, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to 50% of such System Member's Normal Pension Base or, alternatively, in an amount which shall be equal to 55% thereof in the event that such member shall have had 25 years of service or more as of the date of his death. (Amended, 1967.)

(2) System Member's Nonservice-Connected Death. The qualified surviving spouse of a System Member who shall have 5 years of service or more since the date of his last regular and permanent appointment as a Department Member including his service of the required probationary period and who shall die while he is a Department Member, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his duties, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to 40% of such System Member's Nonservice-Connected Pension Base. (Added, 1967.)

(3) System Member's Death While on Service-Connected Disability Pension. The qualified surviving spouse of a Retired Member, who shall die while he is receiving a pension pursuant to subsection (a) of Section 190.12, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to 50% of such Retired Member's Normal Pension Base or, alternatively, in an amount which shall be equal to 55% thereof in the event that such member shall have had 25 years of service or more as of the effective date of his retirement. (Amended, 1967.)

(4) System Member's Death While on Nonservice-Connected Disability Pension. The qualified surviving spouse of a Retired Member, who shall die while he is receiving a pension pursuant to subsection (b) of Section 190.12, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to 40% of such Retired Member's Nonservice-Connected Pension Base. (Added, 1967.)

(5) System Member's Death While on Service Pension. The qualified surviving spouse of a Retired Member, who shall die while he is receiving a pension pursuant to Section 190.11, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to the same percentage of such Retired Member's Normal Pension Base as the percentage thereof which had been applicable to the calculation of his pension, provided, however, that the percentage of his Normal Pension Base shall not exceed 55% for the purposes of this subsection of this section. (Added, 1967.)

(6) System Member's Death While Eligible for Service Pension. The qualified surviving spouse of a System Member who shall die, while he is a Department Member eligible for a pension pursuant to Section 190.11, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his duties, shall be paid, for life or until she shall cease to be a qualified surviving spouse, a monthly pension in an amount which shall be equal to the same percentage of such System Member's Normal Pension Base as the percentage thereof which would have been applicable to the calculation of his pension had he retired pursuant to Section 190.11 as of the date of his death, provided, however, that the percentage of his Normal Pension Base shall not exceed 55 per cent for the purposes of this subsection of this section. (Added, 1967.)

(7) Additional Pension Amounts. Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to the qualified surviving spouse, then such qualified surviving spouse shall be paid, but only while she is a qualified surviving spouse, an additional monthly pension in an amount which shall be equal to 25% of the amount of her pension as a qualified surviving spouse granted pursuant to any of the foregoing paragraphs of this subsection of this section while there is 1 minor child or dependent child, 40% thereof while there are 2 minor children or dependent children or a combination thereof, and 50% thereof while there are 3 or more minor children or dependent children or a combination thereof, and such additional monthly pension shall be the exclusive property of such qualified surviving spouse and not the property of any such minor child or dependent child. (Added, 1967.)

Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to a former spouse, then the guardian or guardians of the estate or estates of any such minor child or children or dependent child or children shall be paid, but only while the qualified surviving spouse is a qualified surviving spouse, a monthly pension in an amount which shall be equal to 25% of the amount of the pension of the qualified surviving spouse granted pursuant to any of the foregoing paragraphs of this subsection of this section while there is 1 minor child or dependent child, 40% thereof while there are 2 minor children or dependent children or a combination thereof, and 50% thereof while there are 3 or more minor children or dependent children or a combination thereof, and such monthly pension shall be the exclusive property of such minor child or children or dependent child or children and not the property of the qualified surviving spouse. (Added, 1967.)

Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to the qualified surviving spouse and a minor child or children or a dependent child or children of his marriage to a former spouse, then a monthly pension shall be paid, but only while the qualified surviving spouse is a qualified surviving spouse, in an amount which shall be equal to 25% of the amount of the pension of the qualified surviving spouse granted pursuant to any of the foregoing paragraphs of this subsection of this section while there is 1 minor child or dependent child, 40% thereof while there are 2 minor children or dependent children or a combination thereof. The amount of such monthly pension shall be

divided by the number of minor children or dependent children and shall be adjusted accordingly whenever any minor child or dependent child shall cease to be such. The qualified surviving spouse shall be paid the portion of such monthly pension which shall be applicable to the number of her minor children or dependent children and the same shall be her exclusively property. The guardian or guardians of the estate or estates of the minor children or dependent children who are not those of the qualified surviving spouse shall be paid the portion of such monthly pension which shall be applicable to such minor children or dependent children and the same shall be the exclusive property of such children. (Added, 1967.)

(8) Reinstatement of Pension of Reinstated Qualified Surviving Spouse. Any qualified surviving spouse, who shall marry and thereby cease to be a qualified surviving spouse, shall be reinstated as a qualified surviving spouse as of: (i) the date upon which a judgment or decree shall become final dissolving such marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided, provided, however, that such date shall be within 5 years from the date of the marriage ceremony; or (ii) the date upon which such marriage shall be dissolved by the death of the other party thereto, provided, however, that such date shall be within 5 years from the date of the marriage ceremony. Such reinstated qualified surviving spouse shall be entitled to the reinstatement of her pension effective as of either such date, whichever shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the marriage ceremony. The pension paid to any other Beneficiary or Beneficiaries during the period of the marriage or purported marriage of such reinstated qualified surviving spouse shall cease when her pension shall be reinstated,

except as is otherwise provided in paragraph (7) of this subsection of this section. However, should such reinstated qualified surviving spouse thereafter be a party to another marriage ceremony, her pension as such shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated. (Amended, 1967.)

(b) Pension For Minor Child or Children and Dependent Child or Children. Whenever any System Member or Retired Member shall die, without leaving a qualified surviving spouse, the guardian of the estate of his minor child or children or dependent child or children shall be paid, until each such child shall cease to be a minor child or dependent child, a monthly pension pursuant to paragraph (1), to paragraph (2), to paragraph (3), to paragraph (4), to paragraph (5), or to paragraph (6) of subsection (a) of this section, whichever shall be applicable. Whenever any such member shall die, leaving a qualified surviving spouse who thereafter shall cease to be a qualified surviving spouse or who thereafter shall cease to be a reinstated qualified surviving spouse, the guardian of the estate of his minor child or children or dependent child or children shall be paid, until each such child shall cease to be a minor child or dependent child, a monthly pension pursuant to one of the aforementioned paragraphs of subsection (a) of this section, whichever shall be applicable. In either of the foregoing events and if there were to be more than 1 minor child or dependent child, an equal share of such monthly pension shall be paid for and on behalf of each such child to the guardian of his estate and shall be adjusted as each of them shall cease to be a minor child or dependent child in the

manner set forth in paragraph (7) of subsection (a) of this section. (Amended, 1967.)

(c) Pension for Dependent Parent or Parents. Whenever any System Member or Retired Member shall die, without leaving a qualified surviving spouse or a minor child or dependent child, a monthly pension pursuant to paragraph (1), to paragraph (2), to paragraph (3), to paragraph (4), to paragraph (5) or to paragraph (6) of subsection (a) of this section, whichever shall be applicable, shall be paid to his dependent parent or parents or to the survivor of them until each such dependent parent shall cease to be such. Any dependent parent who shall cease to be such but who thereafter again shall become unable to pay his or her necessary living expenses without a pension shall be entitled to have his or her pension reinstated. (Added, 1967.)

(d) Determinations With Respect to Cause of Death, Dependent Child and Dependent Parent. The Board shall have the same power as that which has been given to it by subsections (c) and (d) of Section 190.12 in order to determine: (1) the fact of whether a System Member's death was service-connected or nonservice-connected for the purposes of paragraphs (1) and (2) of subsection (a) of Section 190.13; (2) the fact of whether or not a child of a deceased System Member or Retired Member is a dependent child; and (3) whether or not any parent of a deceased System Member or Retired Member is a dependent parent. The Board also shall have the power to determine, from time to time, the fact of whether or not a child who had been determined by it to be a dependent child continues to be a dependent child, the fact of whether or not a parent who had been determined by it to be a dependent parent continues to be a dependent parent and the fact of whether or not a dependent parent who

had ceased to be such thereafter shall have become entitled to have his or her pension reinstated. (Added, 1967.)

(e) Medical Reports and Hearings. The power of the Board to determine the fact of whether a System Member's death was service-connected or nonservice-connected, as provided in Subsection (d) of this section, hereafter may be exercised by it upon the basis of a written report from 1 regularly licensed and practicing physician selected by it, provided, however, that it, in its discretion, may obtain such a report from each of more than 1 such physician. The determination hereinbefore referred to in this paragraph may at the option of the Board be made without a hearing pursuant to the provisions of Subsection (d) of this section being held. (Amended, 1971.)

Sec. 190.14. Cost of Living Adjustments to Certain Pensions.

(a) Determination of Cost of Living Increase or Decrease. The Board, before May 1st of each year commencing with the year 1967, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1st of that year from March 1st of the preceding year, as shown by the consumer price index published by the Bureau of Labor Statistics for the area in which the City is located. If any such index were not to reflect the cost of living as of a particular March 1st then the index for the closest preceding date which shall have done so shall be used. If there were to be any change in the statistical method or the components which were used in any such index from those which were used in any such index of the preceding year with which a comparison is to be made, then the Board, to the extent possible, shall adjust any such differences therein for the purpose of

determining the percentage of increase or decrease in the cost of living. (Added, 1967.)

(b) Adjustments to be Made in Pensions. Commencing as of July 1st of the year in which the Board shall determine the percentage of increase or decrease in the cost of living, the monthly amounts of certain pensions, as hereinafter identified and upon the conditions hereunder stated therefor, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living but not to exceed, however, 2% in any given year. Such determined percentage of increase or decrease in the cost of living, as so limited, shall be applied to the monthly amounts of such pensions which shall be payable prior to the applicable July 1st, including any previous percentage of increase or decrease in the cost of living which had been made with respect thereto. (Added, 1967.)

The percentage of increase or decrease in the cost of living first shall be applied to (Added, 1967.):

(1) The pension of any Retired Member who shall retire pursuant to Section 190.11, with less than 25 years of service, upon the July 1st following the date upon which he would have had 25 years of service if he had not retired prior thereto (Added, 1967.);

(2) The pension of any Retired Member who shall retire pursuant to Section 190.11, with 25 years of service or more, upon the July 1st following the effective date of his pension (Added, 1967.);

(3) The pension of any Beneficiary or Beneficiaries which shall be granted pursuant to paragraph (5) or to paragraph (6) of subsection (a) of Section 190.13, whether by reason of the provisions thereof or of those of subsection (b) or of subsection (c) of said section, in-

cluding any additional pension amounts payable pursuant to paragraph (7) of subsection (a) of said section, following the death, with less than 26 years of service, of a Retired Member who had been retired pursuant to Section 190.11 or of a System Member who had become eligible to retire pursuant thereto, upon the July 1st following the date upon which such Retired Member or such System Member, as the case may be, would have had 26 years of service if he, the Retired Member, had not retired prior thereto and had been alive on that date, or if he, the System Member, had been alive on that date; and (Amended, 1967.)

(4) The pension of any Beneficiary or Beneficiaries which shall be granted pursuant to paragraph (5) or to paragraph (6) of subsection (a) of Section 190.13, whether by reason of the provisions thereof or of those of subsection (b) or of subsection (c) of said section, including any additional amounts payable pursuant to paragraph (7) of subsection (a) of said section, following the death, with 26 years of service or more, of a Retired Member who had been retired pursuant to Section 190.11 or of a System Member who had become eligible to retire pursuant thereto, upon the July 1st following the effective date of the pension of such Beneficiary or Beneficiaries. (Amended, 1967.)

(5) The pension which shall become payable to any minor child or children or dependent child or children, whenever any qualified surviving spouse or reinstated qualified surviving spouse shall cease to be such, shall commence in the same monthly amount which then would have been payable if such pension had become effective upon the date following the date of death of the System Member or Retired Member and thereafter it shall be adjusted as otherwise provided in this section. The pen-

sion which shall become payable to any reinstated qualified surviving spouse, as reinstated pursuant to paragraph (8) of subsection (a) of Section 190.13, shall commence in the same monthly amount which then would have been payable if she never had ceased to be a qualified surviving spouse and thereafter it shall be adjusted as otherwise provided in this section. The pension which shall become payable to any reinstated dependent parent or parents, as reinstated pursuant to subsection (c) of Section 190.13, shall commence in the same monthly amount which then would have been payable if he or she or each of them never had ceased to be a dependent parent and thereafter it shall be adjusted as otherwise provided in this section. (Added, 1967.)

(6) The amount of any pension referred to in (1), (2), (3), (4) or (5) of this subsection never shall be reduced, by reason of the application thereto of this section, to an amount less than the amount thereof payable pursuant to the provisions of this Article other than those of this section. (Added, 1967.)

(c) Further provisions as to Adjustments. If the percentage of increase or decrease in the cost of living in any year, as determined by the Board, were to exceed 2% as compared with the cost of living as of March 1st of the preceding year, the percentage of increase or decrease in the cost of living in excess of 2% shall be carried over and added to or subtracted from the percentage of increase or decrease in the cost of living in the succeeding year, and such procedure shall be complied with from year to year. (Added, 1967.)

**Sec. 190.141. Extension of Cost of Living Adjustments to Pensions Formerly Excluded Therefrom.**

(A) Wherever used in this section: (1) "the pension" shall mean, unless Section 190.14 shall be mentioned in conjunction therewith, only a pension which is not identified in Section 190.14; (2) "the July 1st following" shall mean only a July 1st subsequent to the effective date of this section; (3) "Beneficiary" shall include its plural; and (4) words with respect to any pension granted or to be granted pursuant to any of the first six paragraphs of Subsection (a) of Section 190.13 also shall mean and include the words, as used in Paragraph (3) of Subsection (b) of Section 190.14, "whether by reason of the provisions thereof or of those of subsection (b) or of subsection (c) of said section, including, any additional pension amounts payable pursuant to paragraph (7) of subsection (a) of said section." (Added, 1969.)

(B) The percentage of increase or decrease in the cost of living hereafter shall be applied pursuant to Section 190.14 and the terms and conditions contained in this section: (Added, 1969.)

(1) To the pension of any Retired Member, heretofore or hereafter granted pursuant to Subsection (a) of Section 190.12, upon the July 1st following (a) the date of his retirement or (b) the effective date of this paragraph of this section, whichever shall be the later; or Subsection (b) of Section 190.12 upon the July 1st following (a) the date he shall have had 25 years of service, (b) the date he would have had 25 years of service if he theretofore had not retired or (3) the fifth anniversary of the effective date of the pension, whichever shall be the earliest (Amended, 1975.);

(2) To the pension of any Beneficiary, (a) heretofore or hereafter granted pursuant to Paragraph (1) or Paragraph (2) of Subsection (a) of Section 190.13 upon the death of a Department Member not eligible to retire pursuant to Section 190.11, or (b) heretofore or hereafter granted pursuant to Paragraph (6) of Subsection (a) of Section 190.13 upon the death of a Department Member eligible to retire pursuant to Section 190.11 and which pension of such Beneficiary is identified in Paragraph (3) or Paragraph (4) of Subsection (b) of Section 190.14, upon the July 1st following (I) the date such member shall have had 26 years of service, (II) the date such member would have had 26 years of service if he then had been alive or (III) the fifth anniversary of the effective date of the pension of such Beneficiary, whichever shall be the earliest; and

(3) To the pension of any Beneficiary, (a) heretofore or hereafter granted pursuant to Paragraph (5) of Subsection (a) of Section 190.13 upon the death of a Retired Member theretofore retired pursuant to Section 190.11 and which pension of such Beneficiary is identified in Paragraph (3) or Paragraph (4) of Subsection (b) of Section 190.14, (b) heretofore or hereafter granted pursuant to Paragraph (3) of Subsection (a) of Section 190.13 upon the death of a Retired Member theretofore retired pursuant to Subsection (a) of Section 190.12, or (c) heretofore or hereafter granted pursuant to Paragraph (4) of Subsection (a) of Section 190.13 upon the death of a Retired Member, theretofore retired pursuant to Subsection (b) of Section 190.12, upon the July 1st following (I) the date such member shall have had 26 years of service, (II) the date such member would have had 26 years of service if he theretofore had not retired and then had been alive or (III) the fifth anniver-

sary of the effective date of the pension of such member, whichever shall be the earliest.

(C) The following provisions, in respects other than those provided for in Subsection (B) of this section, hereafter shall be controlling in the application to certain pensions of the percentage of increase or decrease in the cost of living.

(1) Whenever the amount of the pension (a) of any Retired Member shall be increased or decreased pursuant to Subsection (a) and Subsection (c) of Section 190.12 or (b) of any qualified surviving spouse shall be increased or decreased pursuant to any paragraph of Subsection (a) of Section 190.13: (I) the amount of any such increase shall not include the percentage of any increase in the cost of living which theretofore had been applied to the former amount of the pension; and (II) the amount of any such decrease shall include the percentage of any increase in the cost of living which theretofore had been applied to it as a portion of the former amount of the pension.

(2) Whenever the pension of any Beneficiary, (a) hereafter shall be granted pursuant to Paragraph (5) of Subsection (a) of Section 190.13 upon the death of a Retired Member theretofore retired pursuant to Section 190.11 and which pension of such Beneficiary is identified in Paragraph (3) or Paragraph (4) of Subsection (b) of Section 190.14, (b) hereafter shall be granted pursuant to Paragraph (3) of Subsection (a) of Section 190.13 upon the death of a Retired Member theretofore retired pursuant to Subsection (a) of Section 190.12, or (c) hereafter shall be granted pursuant to Paragraph (4) of Subsection (a) of Section 190.13 upon the death of a Retired Member theretofore retired pursuant to Subsection (b) of Section 190.12, the amount of the pension of any such Beneficiary, (I) if the amount thereof which

shall be payable to such Beneficiary were to be more than the amount of the pension which had been payable to such member, shall include the percentage of any increase in the cost of living which had been applied to the pension of such member, or (II) if the amount thereof which shall be payable to such Beneficiary were to be less than the amount of the pension which had been payable to such member, shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such member which shall be in the same ratio as the amount of the pension which shall be payable to such Beneficiary shall bear to the amount of the pension which had been payable to such member, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such member as of the date of his death shall be carried over for such Beneficiary if (I) hereof were to be applicable or in the same ratio therein provided if (II) hereof were to be applicable.

(3) Whenever the pension of any qualified surviving spouse hereafter shall be terminated pursuant to any provisions of Subsection (a) of Section 190.13 and the pension thereafter shall become payable on behalf of any minor child or children or dependent child or children of the deceased member, the amount of pension on behalf of such child or children shall include that portion of the percentage of increase in the cost of living which had been applied to the pension of such qualified surviving spouse which shall be in the same ratio as the amount of the pension which shall be payable on behalf of such child or children shall bear to the amount of the pension which had been payable to such qualified surviving spouse, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such qualified surviving spouse as of the date of

the termination of his or her pension shall be carried over on behalf of such child or children in the same ratio hereinabove provided.

(D) The amount of the pension never shall be reduced by reason of the application thereto of the provisions of Section 190.14 or this section, to an amount less than the amount thereof payable pursuant to provisions of this Article other than those of Section 190.14 and this section.

Section 190.14 hereafter shall be construed and applied in accordance with this section as to each pension mentioned in this section. (Sec. added, 1969.)

Sec. 190.142. Minimum Pensions and Modifications of Cost of Living Adjustments.

(A) Each pension granted pursuant to this Article, regardless of the type of the pension, which became or becomes effective prior to July 1, 1971 and which, as of June 30, 1971, is in a monthly amount of less than \$350.00 shall be increased, effective July 1, 1971, pursuant to the provisions of Subsection (B) and Subsection (C) of this section, and shall, if such increase results in a monthly pension amount which is less than \$350.00, be increased to provide for a monthly minimum pension of \$350.00. Each pension granted pursuant to this Article, regardless of the type of the pension, which becomes effective on or subsequent to July 1, 1971 shall be in a monthly amount not less than the minimum monthly pension amount provided, as of the effective date of the pension by this subsection of this section. The monthly amount of each such pension never shall be reduced, by reason of the provisions of Section 190.14, Section 190.141 or Subsection (C) of this section, to a monthly amount less than the

minimum monthly pension amount provided by this subsection.

(B) The monthly amount of pension of each Beneficiary which, prior to the effective date of this section, had been increased by reason of a cost of living adjustment thereof pursuant to Section 190.14 or Section 190.141 shall be increased, as of July 1, 1971, by that portion of the percentage of the annual increase in the cost of living, as had been determined by the Board of Pension Commissioners pursuant to Section 190.14, which was in excess of 2% but not in excess of 3% for each year the monthly amount of such pension had been increased.

(C) The monthly amount of pension of each Beneficiary who heretofore did qualify or hereafter shall qualify for a cost of living adjustment thereof pursuant to Section 190.14 or Section 190.141 and the monthly amount of pension of each Beneficiary which shall be the minimum monthly pension amount provided by Subsection (A) of this section, hereafter shall be increased or decreased, as of the dates provided therefor by Section 190.14, by the percentage of the annual increase or decrease in the cost of living as hereafter shall be determined by said board pursuant to Section 190.14.

(D) The provisions of Section 190.11, 190.12, 190.13, 190.14 and 190.141 hereafter shall be construed and applied in accordance with the provisions of this section.

(E) Should any provisions of this section at any time be held to be invalid, in their application to certain persons or periods of time, such invalidity shall not affect the validity of any provisions as to other persons entitled to benefits hereunder or the applicability as to other periods of time.

(F) The operative date of this section is July 1, 1971.  
(Sec. added, 1971.)

Sec. 190.143. Limitations on Cost of Living Adjustments.

(A) (1) Cost of living adjustments of any pension hereafter granted pursuant to the provisions to this Article shall, as of the effective date of this Section, be subject to certain limitations as hereinafter more specifically provided:

At the time each such pension shall become eligible for cost of living adjustments, as provided in this Article, it shall be adjusted in accordance with a formula which shall take into account years of service and partial years of service served by a System Member prior to the effective date of this Section, hereafter referred to as "prior service" and years of service and partial years of service served subsequent to such effective date, hereafter referred to as "subsequent service". Cost of living adjustments shall consist of two parts, one of which shall be on account of all prior service of the Retired Member and the other part on account of all subsequent service of the Retired Member. As to prior service, such Retired Member shall be entitled to have his or her pension increased or decreased as of the dates provided therefor by Section 190.14, by the percentage of the annual increase or decrease in the cost of living as shall be determined by the Board of Pension Commissioners pursuant to Section 190.14, and in accordance with the formula hereafter set forth, and such prior service shall be known as the "uncapped cost of living portion". As to subsequent service, such Retired Member shall be entitled to have his or her pension increased or decreased, as of the dates provided therefor by Section 190.14, by a percentage not to exceed an increase or decrease of 3% in any given year

and, in accordance with the formula hereafter set forth, and such subsequent service shall be known as the "capped cost of living portion".

(2) The applicable formula to be employed in calculating the total cost of living adjustment to which Retired Members whose cost of living adjustments are subject to the conditions and limitations contained in this Section are entitled, shall be as follows: The percentage that prior years of service of a System Member bears to the total years of service of such System Member shall be applied to his or her pension when computing cost of living adjustments and that amount shall be considered the uncapped cost of living portion; and the remaining amount of the pension shall be considered the capped cost of living portion. For purposes of applying the above formula, the total years of service to be considered shall not exceed thirty years.

(3) Pensions which become payable before July 1 of any year, but subsequent to the preceding July 1, will be adjusted as to the uncapped cost of living portion and the capped cost of living portion on a prorated basis whereby one-twelfth ( $\frac{1}{12}$ ) of the annual adjustment shall be applied for each completed month since such pension commenced.

(4) Pensions payable to the eligible survivors of deceased former System Members or Retired Members shall receive cost of living adjustments according to the formula provided in this Section, whereby such formula will be based upon the years of prior service and years of subsequent service of the deceased System Member or deceased Retired Member as applied to the pension upon which the survivor's pension will be calculated.

(B) The capped cost of living portion may be subject to discretionary cost of living adjustments as hereinafter specified. To the extent that the percentage of the capped cost of living portion of the cost of living adjustment provided in Subsection (A) hereof is less than the annual change in the cost of living as determined pursuant to the provisions of Section 190.14 of this Article, the City Council may grant discretionary cost of living adjustments of the capped cost of living portion in addition to the annual cost of living adjustments, subject to the following conditions and requirements:

(1) Discretionary adjustments may not be provided more frequently than once every three (3) years, counting from the effective date of this Section and, after a discretionary adjustment has once been made, counting from the date the last discretionary adjustment became effective.

(2) Discretionary adjustments shall not exceed one-half ( $\frac{1}{2}$ ) of the difference between the percentage of the annual increases in the cost of living, as determined pursuant to the provisions of Section 190.14 of this Article and of the annual capped cost of living portion adjustments made pursuant to the provisions of this Section for each of the preceding three (3) years. Discretionary adjustments shall be allocated to each of the three (3) years for which an adjustment is made.

(3) Discretionary adjustments herein provided shall be subject to the following limitations: If a pension became payable on or after the July 1 immediately preceding the effective date of such adjustment, it shall not be so adjusted; and any pension which shall have become payable at a time within the three (3) year period (but prior to the immediately preceding July 1) shall be prorated on a monthly basis to the number of completed

months for which the pension was received, provided that survivorship pensions paid pursuant to the provisions of this Article shall be adjusted by basing eligibility on the date upon which the Retired Member's pension became effective.

(4) Discretionary cost of living adjustments may be provided only by ordinance. Ordinances providing discretionary adjustments may not be finally adopted until the City Council has first obtained and published a report from the actuary or actuaries of the New Pension System indicating the present value of the liabilities that will be created by the proposed discretionary adjustment. This report must identify the annual funding cost of amortizing this liability over the funding period provided by the provisions of this Article.

(5) Ordinances adopted pursuant to this Subsection must be adopted by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council in the same manner as other ordinances requiring a two-thirds vote. No such ordinance may be finally adopted by the Council until the expiration of at least thirty (30) days after its first presentation to the Council, nor until after a public hearing has been held thereon. Ordinances adopted pursuant to this Subsection shall be published no later than November 30 and shall become effective January 1.

(6) All adjustments provided in this Subsection are to be applied prospectively only and shall not be understood to permit retroactive adjustments of pensions.

(C) In no event shall pensions adjusted pursuant to the provisions of Subsection (B) of this Section ever be decreased below the amount received by the eligible

recipient of a pension under the provisions of this Article when such pension first became payable to him or her.

(D) Should any provision of this Section at any time be held to be invalid, in its application to certain persons or periods of time, such invalidity shall not affect the validity of that or any other provision as to other persons entitled to benefits hereunder or the applicability as to other periods of time. (Sec. added, 1982.)

Sec. 190.15. Effect of Receipt of Compensation.

For the purposes of this section, "compensation" is defined as every payment provided for by any general law providing benefits for injury, sickness or death caused by or arising out of employment, and also includes payments made to satisfy any claim for damages to the extent that such payments relieve of the obligation to pay compensation under any such general law. If, pursuant to general law, an award of compensation shall be made or compensation shall be paid on account of injury, sickness or death caused by or arising out of employment as a Department Member then, and in that event, the total amount of any pension granted pursuant to this Article shall be deemed to be, and shall be, reduced by the total amount of the compensation so awarded or so paid and the amount remaining after such reduction therefrom shall be deemed to be, and shall be, the pension so granted; provided, however, that any pension granted pursuant to Section 190.11 shall not be reduced by any compensation which shall be awarded or paid, nor shall any pension be reduced by any compensation which shall be awarded or paid to any Retired Member retired pursuant to Section 190.11 or to any System Member who shall die while eligible to retirement pursuant to said section. In the event that any such award shall be made or compensation shall be paid, any installment payments

which shall be made pursuant to this Article shall be deemed to be, and shall be, payments of such award or compensation and shall be applied to the payment of any such award or compensation and any portion of the installment payments which shall not be so applied shall be deemed to be, and shall be, payments of the pension so granted. Pension installment payments shall be made only to the extent that the cumulative sum of the installment payments of pension provided for in this Article and accrued and paid shall exceed the cumulative sum of the award or compensation paid. No deductions which shall be made from the salary of any System Member and deposited to the credit of the New System Service Pension Fund shall cover, directly or indirectly, the cost of any compensation but shall be applied only to the cost of pensions which shall be granted pursuant to Section 190.11. (Sec. added, 1967.)

Notwithstanding the foregoing provisions of this section, the Board may provide by rule that compensation rewards may be deducted on an installment basis; provided, however, that no such installment may be smaller than 25% of any monthly pension amount payable to the Retired Member. (Added, 1986.)

Sec. 190.16 Miscellaneous Provisions.

The provisions of this section shall be controlling if there were to be any other provision contained elsewhere in this Article which is or could be construed to be contrary thereto, in conflict therewith or different therefrom.

(1) Any System Member who shall believe that he is eligible to be retired pursuant to Section 190.11 and that he also is eligible to be retired pursuant to Section 190.12, shall have the right to file his written application to be

retired pursuant to either one of said sections and the Board, if it were to determine that the contingencies provided in this Article for retirement pursuant to the particular section involved had happened or occurred as to such member, shall retire him in accordance with his written application therefor.

(2) In the event that any System Member were to file his written application to be retired and a written request for him to be retired also were to be filed by or on behalf of the head of the department in which he is a Department Member, the Board shall not consider or make any determination with respect to such written request unless and until it first shall have considered such member's written application and shall have determined that he is not entitled to be retired in accordance therewith.

(3) Any former System Member who shall believe that he is eligible to be paid a pension pursuant to Section 190.11 or pursuant to Section 190.12, may file his written application for the payment to him of a pension pursuant to either one of said sections within the time prescribed for the filing thereof by any applicable provision of law and the Board, if it were to determine that the contingencies provided in this Article for the payment thereof had happened or occurred as to such former member prior to the date upon which he had ceased to be a System Member and if there is no legal bar or defense to the granting to him of such pension or to any judicial action or proceeding which could be brought by him with respect thereto, shall grant him the pension in accordance with his written application therefore. (Sec. added, 1967.)

**Sec. 190.50. Authority of City Council to Establish Certain Benefits by Ordinance.**

**(a) Purpose of this Section.**

It is the purpose of this section to enable the City Council of the City of Los Angeles to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of this article may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the City Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

**(b) Mode of Adoption of Ordinance.**

Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council in the same manner as other ordinances requiring a two-thirds vote. No such ordinance may be finally adopted by the Council until the expiration of at least thirty days after its first presentation to the Council, nor until after a public hearing has been held thereon.

Any ordinance adopted pursuant to this section shall go into effect upon the expiration of thirty days from its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates.

**(c) Limitations on City Council's Authority.**

An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a city

fund or funds other than those created under Section 190.06 of this article, would be in excess of the maximum available subsidy payment for beneficiaries under the provisions of any ordinance adopted pursuant to the authority of Section 512.2 of this Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the New Pension System.

Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board of Pension Commissioners. In furtherance thereof, the Board shall have the authority to contract for suitable programs as hereinabove defined in subsection (a) hereof, to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs.

Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, provided, however, that the Board shall reimburse the General Fund of the City of Los Angeles for all necessary expenses incurred by the Personnel Department as a result thereof.

The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments on the following conditions only: (1) to reflect changes in subsidies provided for active members or (2) to offset any increases or decreases in the level of benefits referred to in subsection (a) of this section or the cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

201a

(d) The provisions of Section 190.05 hereafter shall be construed and applied in accordance with the provisions of this section. (Sec., added 1974.)



## APPENDIX I-A



**H****LIMITATIONS ON COST OF LIVING ADJUSTMENTS  
OF PENSIONS AND REFUNDABILITY OF EM-  
PLOYEE CONTRIBUTIONS TO FIRE AND PO-  
LICE PENSION SYSTEMS. CHARTER  
AMENDMENT H.**

Shall Sections 186½ and 190.10 of the Charter be amended and shall Sections 184.96 and 190.143 be added to provide that: (1) Cost of living adjustments of pension benefits of firefighters and police officers be limited to 3% annually for pensions based on future years of service, with possible limited adjustments every three years at the discretion of the City Council; and (2) That monies contributed by members of said pension systems become refundable?

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**IMPARTIAL SUMMARY OF MEASURE  
BY KEN SPIKER, CHIEF LEGISLATIVE ANALYST**

The Charter establishes three pension systems for firefighters and police officers [Articles XVII, XVIII and XXXV]. City firefighters and police officers are each covered by *one* of these systems depending on when they were hired. These systems are separate and the benefits provided under each system differ. This measure would make changes in certain pension benefits provided for those firefighters and police officers hired on or before December 7, 1980 [Articles XVII and XVIII of the Charter]. The proposed changes relate to annual cost-of-living adjustments and the refundability of members' accumulated pension contributions. This measure would not affect the pension benefits of firefighters and police officers hired after December 7, 1980 whose pension benefits are established in Article XXXV of the Charter, the Safety Members Pension Plan.

The pension benefit paid to a retired firefighter or police officer is based on the employee's years of service and salary level. Currently, the provisions which establish the two pension systems for firefighters and police officers hired on or before December 7, 1980 provide that the pensions paid to retired members are adjusted annually to reflect the increase or decrease in the cost-of-living during the preceding 12 months.

Under this Charter amendment, that portion of a member's pension which is based on service *after* the effective date of this measure would be adjusted annually to reflect changes in the Consumer Price Index, but only up to a maximum increase or decrease of 3% in any one year. The Council and Mayor could provide additional cost-of-living adjustments to those pension benefits which are earned in the future, but not more frequently than once every three years. These additional adjustments could not exceed one-half the difference between the movement of the Consumer Price Index for each of the three preceding years and the automatic adjustments received during that same period.

The portion of a member's pension benefit earned *before* the effective date of this measure would continue as at present to be adjusted based on the full movement of the Consumer Price Index.

This measure will only affect firefighters and police officers who are hired on or before December 7, 1980, and who retire after the effective date of this measure. These changes will in no way affect the pensions of firefighters and police officers who are now retired or who retire before the effective date of this measure.

Under existing Charter provisions, firefighters and police officers hired on or before December 7, 1980 are not

provided a refund of their pension contributions if they terminate service prior to retirement. This measure would allow for the refund of accumulated contributions, plus 6% annual interest, to those members who do terminate service prior to retirement.

### ARGUMENT IN FAVOR OF PROPOSED CHARTER AMENDMENT H

Charter Amendment H will put a lid on runaway Police and Fire Pension costs which not threaten to further burden Los Angeles taxpayers and hamper the City's ability to provide adequate police protection.

Right now the pension system's annual costs are out of control. Since 1971 these costs have increased to \$233 million, which is almost the entire amount the City received this year from property taxes. Last year alone, the cost of the system jumped \$56 million and forced the elimination of 2000 positions throughout City government, including the Fire and Police Departments. The system is now \$3.2 billion in debt, and that debt will grow to \$12 billion if the system is not reformed.

The present system has meant:

- Pensioners receiving bigger increases than working police officers and firefighters, encouraging early retirement.
- Taxpayers paying 76 cents on top of every dollar paid in salaries.

Charter Amendment H will head off disaster by bringing pension costs in line with current fiscal constraints. This amendment will replace open-ended pension increases with a 3% limit on annual cost-of-living adjustments.

It will mean:

- The City can put more police on the street and encourage experienced officers and firefighters to stay on the job longer.
- Los Angeles can avoid a possible financial crisis that will hurt all the taxpayers of our city.
- The pension system will remain solvent and will continue to guarantee a secure future for our police officers and firefighters.

This Charter amendment will not take away any existing benefits and it will help insure that Los Angeles' pension system remains one of the Nation's best.

**TOM BRADLEY**

Mayor

**MARVIN BRAUDE**

Chairman, Council

Finance and Revenue

Committee

**ZEV YAROSLAVSKY**

Chairman, Council

Police, Fire and Public

Safety Committee

**BRUCE SCHWAEGLER**

President, Central City

Association

**MARILYN KIZZIAH**

Coordinator, Women

For:

**JOEL WACHS**

President, Los Angeles

City Council

**WILLARD Z. CARR, JR.**

President, Los Angeles

Chamber of Commerce

**H. EDWARD JACOB**

President, Los Angeles

Taxpayers Association

**WALTER BERAN**

Chairman, Citizens for

Pension Reform

**DR. H. CLAUDE**

HUDSON

Community Leader

## REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSED CHARTER AMENDMENT H

**POLITICIANS** supporting Charter Amendment "H" are attempting to mislead voters and **BREAK THEIR PROMISES.**

Real Pension costs have averaged only 12½% of the City Budget for the past decade and are now declining on their own.

Since 1971, **INFLATION**, not benefits, have increased the dollar amount needed to fund the Pension System. Next year costs will reduce in actual dollar amounts due to the reduction of inflation.

Improved investments and elimination of **POLITICAL FAT** and **BUREAUCRATIC WASTE** would reduce the taxpayers share far more than Charter Amendment "H", without threatening Firefighter and Police morale.

Can we expect those willing to break past promises to keep those now being made in their arguments?

The real **DISASTER** facing Los Angeles is the continued **MANIPULATION AND MISMANAGEMENT** of taxpayers resources and revenues.

Don't jeopardize the future of those risking their lives for us. **IT'S JUST NOT FAIR!!! VOTE "NO" ON CHARTER AMENDMENT "H".**

**JOHN S. GIBSON, JR.**  
President Emeritus  
Los Angeles City  
Council

**J. J. RODRIGUEZ**  
President, Los Angeles  
County Federation of  
Labor, AFL-CIO

**ROBERT FARRELL**  
Councilman  
City of Los Angeles

**ARTHUR SNYDER**  
Councilman  
City of Los Angeles

LYLE E. HALL

President, United  
Firefighters of Los  
Angeles City, Local 112,  
IAFF, AFL-CIO

WILLIAM C. VIOLANTE

President, Los Angeles  
Police Protective  
League

PATRICIA A. HILL

Central City  
Businesswoman

SEYMOUR S. SIMON

Central City  
Businesswoman and  
Attorney

JOHN C. GERARD

Chief Engineer and  
General Manager  
Los Angeles Fire  
Department

DARYL F. GATES

Chief of Police

### ARGUMENT AGAINST PROPOSED CHARTER AMENDMENT H

A NO vote on Charter Amendment H will help preserve the high level of fire and police service in Los Angeles.

In 1967 and again in 1971, the people of Los Angeles made pension promises to our firefighters and police officers. These promises were successfully designed to help recruitment and retain dedicated employees.

Thousands of firefighters and police officers were recruited and have continued employment because of these promises. Without these pension expectations, many members would have changed careers or worked elsewhere.

Now the politicians want us to break our promise, claiming it will save millions of dollars. The same claim was made in 1980, and pension limits were placed on all newly-hired officers.

Proponents of this amendment fail to say that pension costs will DECREASE by millions of dollars next year

WITHOUT this change. They also fail to say that their own experts admit this charter amendment will COST taxpayers up to twenty million dollars.

If this change is adopted, the City's experts and both Department Chiefs anticipate reductions in service due to employees leaving.

Morale will suffer greatly which will negatively impact service.

How long can we expect the fire and police to do more with less?

Career safety employees performing extremely dangerous work should receive pensions that will not disappear because of inflation. Surviving spouses and orphans of those officers killed protecting our lives and property will also suffer if this amendment passes.

For over twenty-five years the politicians failed to fund their share of the Pension System, now they want their employees to bail them out.

Vote NO on breaking this contract made with our officers. Vote NO on breaking our promise. Vote NO on reducing safety service.

Let's support our police officers and firefighters. Vote NO on Charter Amendment H.

**ROBERT FARRELL**

Councilman, 8th District

**ARTHUR K. SNYDER**

Councilman,  
14th District

**JOHN C. GERARD**

Chief Engineer and  
General Manager  
Los Angeles Fire  
Department

**DARYL F. GATES**

Chief of Police

**WILLIAM R.**

**ROBERTSON**

Executive Secretary-  
Treasurer, Los Angeles  
County Federation of  
Labor, AFL-CIO

**SAM DIANNITTO, JR.**

Commissioner, Fire and  
Police Pension System,  
City of Los Angeles

**KARL L. MOODY**

Commissioner, Fire and  
Police Pension System

**LYLE E. HALL**

President, United  
Firefighters of Los  
Angeles City

**R. C. HELMS**

Director, Los Angeles  
Police Protective  
League

**DOLORES SANCHEZ**

Publisher, Eastern  
Group Publications

### **REBUTTAL TO ARGUMENT AGAINST PROPOSED CHARTER AMENDMENT H**

The City faces a serious financial situation. Its fire and police pension costs are far out of line, leading to excessive costs to keep officers on duty. A regular patrol officer costs Los Angeles taxpayers well over \$50,000 a year in salary and pension benefits, far more than other California communities pay. A police captain costs the City more than \$90,000 a year.

These unreasonable costs are draining the City of funds urgently needed for vital services, including better police and fire protection.

Charter Amendment H will alleviate this unfair burden by bringing pension costs under control.

Charter Amendment H will save the taxpayers more than \$30 million a year and still provide firefighters and police officers with an outstanding pension plan.

We simply cannot afford an extravagant pension plan when other vital needs are left wanting.

Vote YES on Charter Amendment H.

**TOM BRADLEY**

Mayor

**MARVIN BRAUDE**

Chairman, Council  
Finance and Revenue  
Committee

**ZEV YAROSLAVSKY**

Chairman, Council  
Police, Fire and Public  
Safety Committee

**BRUCE SCHWAEGLER**

President, Central City  
Association

**MARILYN KIZZIAH**

Coordinator, Women  
For:

**JOEL WACHS**

President, Los Angeles  
City Council

**WILLARD Z. CARR, JR.**

President, Los Angeles  
Chamber of Commerce

**H. EDWARD JACOB**

President, Los Angeles  
Taxpayers Association

**WALTER BERAN**

Chairman, Citizens for  
Pension Reform

**DR. H. CLAUDE**

**HUDSON**  
Community Leader



## **APPENDIX I-B**



UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 84-2213

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MARYLAND STATE TEACHERS ASSOCIATION, INC., a Maryland Corporation, *et al.*, [remaining names of appellants deleted],

*Appellants,*

VERSUS

HARRY HUGHES, Governor of the State of Maryland, *et al.*, [remaining names of respondents deleted],

*Appellees.*

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Appeal from the United States District Court  
for the District of Maryland at Baltimore.

James R. Miller, Jr., District Judge.

(CA M-84-1435)

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Argued: October 7, 1985.      Decided: December 5, 1985

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Before RUSSELL and MURNAGHAN, Circuit Judges,  
and HAYNSWORTH, Senior Circuit Judge.

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— [Appearances of Counsel deleted.]

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PER CURIAM:

In this class action the plaintiffs/appellants, twenty-two individual Maryland public employees and various employee organizations representing them, challenge the constitutionality of Maryland's 1984 Pension Reform Law, 1984 Maryland Laws, Chapter 7, seeking declaratory and injunctive relief against implementation of the 1984 Pension Statute because it impairs a contract be-

tween the State and the members of the plaintiff class in violation of the Contract Clause of the United States Constitution, U.S. Const., Art. I, § 10, cl. 1, and also violates the rights of the class members under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution under Article 24 of the Maryland Declaration of Rights, and under state contract law. The defendants/appellees are the Governor of Maryland and the members of the board of trustees of Maryland State Pension and Retirement Systems.

The district court in a full and well-reasoned opinion granted summary judgment in favor of the State on the Contract Clause claim and denied the due process claim. We affirm on the basis of the district court's opinion, *Md. State Teachers Ass'n v. Hughes*, 594 F.Supp. 1353 (D.Md. 1984).

Accordingly, the judgment of the district court is **AFFIRMED**.

MURNAGHAN, Circuit Judge, concurring:

While I agree with much of what appears in the opinion of the district court, I do not accept its conclusion that the state employees' contract was not altered or impaired. Prior to the 1984 Pension Reform Act, state employees received, if they so elected, an unlimited cost-of-living adjustment to their pension benefits by contributing five percent of their salaries. After the 1984 Act became effective, state employees had to contribute seven percent of their salaries to obtain the same cost-of-living adjustment. Seven percent is greater than five percent, and that difference constitutes a "substantial impairment" of the contract, requiring a "significant and legitimate public purpose" to justify it. See *Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411 (1983).

Moreover, it seems to me to be clear that the 1984 Maryland Pension Reform Act was, in fact, retroactive. An enactment is retroactive if it alters the terms of a contractual obligation already in existence. It is not retroactive if its effect is limited to contractual obligations to be undertaken in the future. Here, the 1984 Act plainly altered the state's existing obligations. It is true that the 1984 Act permitted retention by state employees of the benefits which had already accrued before the effective date of the 1984 statute. But for a teacher, say, with ten years service, during which pension benefits accrued on the reasonable expectation that, *in future*, they would continue to be calculated on the same basis, there has been throughout the whole ten year period a substantial and reasonable life-affecting reliance on that expectation. From 1971 until 1979, Maryland state teachers and other state employees were entitled to an unlimited cost-of-living adjustment to their pension benefits. Md. Ann. Code Art. 73B, §§ 11A, 86A. In 1979, the legislature promised that the terms of the pension program available to persons who were state employees as of that date would not change in an adverse manner during the remainder of their careers as state employees. There can be no question that the legislature's promise imposed a binding obligation on the state. There was reliance on there being no adverse change in the very real sense that for ten years one's freedom to elect to stay or to go elsewhere, or, indeed, to change one's professional path had been exercised on the assumption that the promise of no adverse change would be honored. Yet with the change, the value of the prior ten years was inevitably eroded for they were a part of the teacher's entire professional life and not to be looked at in an isolated fashion as pertaining just to the past ten years. Because the 1984 Act impaired the

state's 1971 and 1979 promises, it was undeniably retroactive in effect.

Nevertheless, a recognition that the 1984 Pension Reform Act operated retroactively and substantially altered the contract rights of state employees, would not alter the disposition of the particular case before us. The retroactive substantial alteration involved state employees and, being reasonable and necessary, constitutionally could be made by the State of Maryland. *Allied Structural Steel v. Spannaus*, 438 U.S. 234, 247 (1978); *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977).

While I personally might decide the other way if the issue were one appearing before us on a clean slate, it is now established by the Supreme Court in *Spannaus* and *United States Trust Co.*, beyond peradventure, that the Contract Clause of the Constitution prohibition against impairment by any state of the obligation of contracts permits even "substantial" impairment of a contract if that impairment is reasonable and necessary.

Here, as a matter of government policy, bearing in mind the obligation of politicians of the present not to throw posterity to the wolves, the legislation was reasonable and necessary to prevent severe imbalance in future state budgets. The appellants do not dispute that the motivation of the State was benign, not malevolent. Hence, I concur.



Supreme Court, U.S.  
FILED  
DEC 20 1989  
JOSEPH F. SPANIOLO, JR.  
CLERK

**In the Supreme Court  
OF THE  
United States**

**OCTOBER TERM, 1989**

**CITY OF LOS ANGELES;  
BOARD OF PENSION COMMISSIONERS  
OF THE CITY OF LOS ANGELES,  
*Petitioners,***

**vs.**

**UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
LOCAL 112, IAFF, AFL-CIO; LOS ANGELES POLICE  
PROTECTIVE LEAGUE; RONALD DEAN GRAY;  
DAVID BACA, JR.; GREGORY PAUL DUST;  
BILL G. MCDANIEL; AND FRED TREDY,  
*Respondents.***

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**BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

---

**JOHN R. McDONOUGH\*  
J. STEVEN GREENFELD  
BALL, HUNT, HART, BROWN AND  
BAERWITZ  
4525 Wilshire Boulevard,  
Third Floor  
Los Angeles, California 90010-3886  
(213) 937-8999**

**LESTER G. OSTROV  
FOGRL, FELDMAN, OSTROV,  
RINGLER & KLEVENS  
5900 Wilshire Boulevard,  
Suite 2600  
Los Angeles, California 90036  
(213) 937-6250**

***Attorneys for Respondents***

**\*Counsel of Record**

42 P



## QUESTIONS PRESENTED

1. Whether the petition for certiorari should be denied because this case was decided below primarily on state grounds.

2. Whether the petition should be denied because there are not special and important reasons for review of this case on writ of certiorari.

3. Whether the petition should be denied because there is no conflict between the decision of the California Court of Appeal and that of the Fourth Circuit Court of Appeals in *Maryland State Teachers Ass'n v. Hughes*, No. 84-2213 (4th Cir. Dec. 5, 1985).

4. Whether the petition should be denied because the courts below correctly held that the California Constitution, California law, and Article I, § 10, cl. 1, of the United States Constitution ("the federal Contract Clause") invalidate the attempt of the City of Los Angeles to impair the vested contractual rights of Los Angeles police officers and firefighters to earn pension benefits on terms substantially the same as those in effect when they were employed and that became effective during their employment.

## THE PARTIES

In addition to the parties listed in the caption, all persons who were active Los Angeles police officers and firefighters on July 1, 1982 and were hired before December 1980 and their dependents have a financial interest in the outcome of this case.

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No. 89-816

# In the Supreme Court

OF THE

United States

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OCTOBER TERM, 1989

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CITY OF LOS ANGELES;  
BOARD OF PENSION COMMISSIONERS  
OF THE CITY OF LOS ANGELES,  
*Petitioners,*

VS.

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
LOCAL 112, IAFF, AFL-CIO; LOS ANGELES POLICE  
PROTECTIVE LEAGUE; RONALD DEAN GRAY;  
DAVID BACA, JR.; GREGORY PAUL DUST;  
BILL G. MCDANIEL; AND FRED TREDY,  
*Respondents.*

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BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI



## CONSTITUTIONAL AND CITY CHARTER PROVISIONS INVOLVED

U.S. Const. art. I, § 10, cl. 1:

No State shall pass any . . . Law impairing the Obligation of Contracts . . . .

California Const. art. I, § 9:

A . . . law impairing the obligation of contracts may not be passed.

Los Angeles City Charter Art. XVII, XVIII:

The text of these articles appears in the Appendix to the petition ("App.") beginning at pages 81a and 130a.

## STATEMENT OF THE CASE

Petitioners' statement of the case is essentially accurate as far as it goes, except in the following particulars:

1. When the Los Angeles electorate voted in 1971 to "uncap" the annual cost of living adjustment ("COLA") to the pensions of the retired police officer and firefighter members of the pension systems established by Articles XVII and XVIII of the Los Angeles City Charter ("the pension systems"), their decision was not a mistake, much less a "disastrous mistake" (petition, p. 3). That action, which merely assured that the purchasing power of pensions initially granted would not be eroded by inflation, was reasonable then and remains reasonable today.

2. Charter Amendment H does not diminish affected pensions only "slightly" (petition, pp. 3, 4); it reduces them substantially. The evidence showed and the trial court found that Charter Amendment H will result in pension benefit losses ranging from hundreds of thousands to millions of dollars for individual members of

the pension systems. 6 C.T. 2039-2045, 2057;<sup>1</sup> trial court decision, App. 43a-44a.<sup>2</sup>

3. It is not true that when the COLAs were uncapped in 1971, the cost to the City of Los Angeles ("the City") was projected to be approximately \$3.75 million per year or that future COLA costs were essentially impossible to predict (petition, p. 3). At trial *petitioners* introduced an exhibit showing that the City projected in 1971 that uncapping the COLAs would cost an additional amount, ranging from a low of \$3.75 million to a high in excess of \$14 million, in fiscal year 1971-72. 6 C.T. 2269. Petitioners introduced another trial exhibit which, based on the 1971-1972 estimate, projected that the additional high-end cost of uncapping the COLA would be \$35.1 million for fiscal year 1982-1983. 9 C.T. 3060. This figure is \$3.1 million *more* than the figure which the City calculated in 1982 would be the first year's budget savings as a result of the passage of Charter Amendment H. 8 C.T. 2762. Moreover, Dr. C. Edwin Piper, the City's Chief Administrative Officer when the COLAs were uncapped, warned the City Council in 1971 that there was a risk of higher than anticipated inflation and recommended, for that reason, that the COLA cap be raised from 2% to 3% rather than removed. 9 C.T. 3071.

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<sup>1</sup>In this brief, references to the clerk's transcript on appeal to the California Court of Appeal are made by volume and page number, *e.g.*, 1 C.T. 50-55; references to the reporter's transcript are made by page and line number, *e.g.*, R.T. 20:6-18.

<sup>2</sup>Using the same assumptions as those used by petitioners in administering the pension systems, respondents demonstrated at trial that Charter Amendment H has a substantial adverse effect on the pensions of affected police officers and firefighters. For example, Trial Exhibit 1 showed that if plaintiff Baca were to retire in 1995 at age 47 after 25 years of service and live to age 78 in 2026, his cumulative pension losses to that date caused by Charter Amendment H would be \$792,138.12. 6 C.T. 2039.

Petitioners' statement of the case does not include a significant number of additional facts which are discussed, as relevant, in the following parts of this brief.

## THE DECISIONS OF THE COURTS BELOW

In a cogent Statement of Decision the trial court declared Charter Amendment H invalid. App. 32a-68a. The court of appeal affirmed the trial court's judgment in full. *United Firefighters of Los Angeles City v. City of Los Angeles*, 210 Cal.App.3d 1095, 259 Cal.Rptr. 65 (1989), reprinted at App. 1a-27a. Both courts concluded that the COLA cap provision enacted by Charter Amendment H substantially impaired vested contractual pension rights of affected members of the Los Angeles police and fire pension systems. Trial court decision, App. 65a-66a; court of appeal decision, 210 Cal.App.3d at 1102, App. 3a. The trial court specifically found that the impairment of pension benefits caused by Charter Amendment H does not satisfy the California test for permissible modifications of vested contractual pension benefits, announced by the California Supreme Court in *Allen v. City of Long Beach*, 45 Cal.2d 128, 131, 287 P.2d 765 (1955), i.e., that a modification which results in disadvantages must be accompanied by comparable new advantages to the public employees whose pension benefits are impaired.<sup>3</sup> Both courts concluded that Charter Amendment H does not bear a material relation to the theory of the pension systems and their successful operation, another requirement of the *Allen* decision.<sup>4</sup> Both courts rejected petition-

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<sup>3</sup>Trial court decision, App. 47a. On appeal and in their petition for review to the California Supreme Court, petitioners did not claim that the detriment caused by Charter Amendment H was compensated by comparable new advantages to the affected pension system members, nor do they make that claim in the petition for certiorari.

<sup>4</sup>Trial court decision, App. 66a; court of appeal decision, 210 Cal.App.3d at 1113, App. 20a-21a.

ers' argument that Charter Amendment H is valid because it allegedly affects only "unearned" pension benefits.<sup>5</sup>

The decisions below discuss and reject petitioners' contention that the substantial impairment of vested contractual pension rights intended and accomplished by Charter Amendment H is legally permissible.<sup>6</sup> Petitioners introduced at trial the testimony of various City officials that, in their opinions, Charter Amendment H was and is reasonable and necessary to (1) preserve the financial soundness of the City; (2) enable the City to predict and plan for long-range budgeting and financing; (3) enable the City to continue providing essential public services; and (4) preserve the pension systems themselves.<sup>7</sup> The trial court accepted the testimony of City officials that they hold these opinions.<sup>8</sup> *However, both courts found that petitioners failed to show that the City could not afford to pay the affected COLAs.*<sup>9</sup> In reaching this conclusion, both courts relied upon stipulations of the parties or uncontradicted evidence that:

- the cost of paying the benefits provided by the police and fire pension systems is a general obligation of the City.<sup>10</sup>
- the City ended each fiscal year from 1976-77 through 1985-86 without having spent all of the

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<sup>5</sup>Trial court decision, App. 45a-47a; court of appeal decision, 210 Cal.App.3d at 1104-05, App. 6a-8a.

<sup>6</sup>Trial court decision, App. 48a-65a; court of appeal decision, 210 Cal.App.3d at 1108-1117, App. 13a-26a.

<sup>7</sup>Trial court decision, App. 61a-62a; court of appeal decision, 210 Cal.App.3d at 1111, App. 18a.

<sup>8</sup>Trial court decision, App. 62a.

<sup>9</sup>Trial court decision, App. 62a-64a; court of appeal decision, 210 Cal.App.3d at 1111-1115, App. 18a-24a.

<sup>10</sup>Trial court decision, App. 49a-50a.

funds in the City's general budget for that year and with unexpended surplus funds in amounts ranging up to \$70 million.<sup>11</sup>

- in each fiscal year after 1981-82, when Charter Amendment H was adopted, the City's general budget increased by about \$200 million (10%) over the prior year, with the result that the City's 1986-87 general budget of \$2.36 billion was almost *\$1 billion more* than the budget in 1981-82.<sup>12</sup>
- when there was a prospective City general budget shortfall of approximately \$142 million in fiscal year 1983-84 — *less than one year after the City Council proposed Charter Amendment H* — the Council imposed new taxes and fees totalling *\$120-\$130 million* to finance that year's budget and the City has continued those increased taxes and fees in effect ever since.<sup>13</sup>
- based on the actuarial testimony presented by *petitioners* at trial, the invalidation of Charter Amendment H will require the City to make additional annual contributions of about \$43 million per year to the pension systems.<sup>14</sup> This represented less than 1% of the City's total 1986-87 budget (including the budgets of independent City departments such as the Department of Airports and Harbor Department) and less than 2% of the City's 1986-87 general budget, and will be a diminishing percentage of the City's budgets as they increase in future years.<sup>15</sup>

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<sup>11</sup>*Id.*, 63a.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>*Id.*, 59a.

<sup>15</sup>*Ibid.*

Based on this record, the trial court found and concluded:

The evidence does not demonstrate that the City was unable to raise additional revenues, or unable at any time in 1981, 1982, or thereafter to meet its financial obligations. The evidence is not convincing that there existed a financial emergency or grave fiscal crisis which made it impossible for the City to meet its obligation to the pension systems.<sup>16</sup>

\* \* \*

The defendants have not convinced this Court that the fiscal picture for Los Angeles is even as bleak today as it was in 1981-82 when Amendment H was debated and enacted. Certainly inflation has slowed and revenues and budgets have increased. Nor have defendants convinced the Court that the future looks bleaker.<sup>17</sup>

\* \* \*

Defendants have not carried their burden of proving that the City is unable to impose any additional taxes, increase existing taxes, or unable to reorder its spending priorities.<sup>18</sup>

\* \* \*

From the time Amendment H was enacted in 1982, the City has failed to contribute the \$43 million recommended by the actuaries to fund that part of the City's contribution attributable to the uncapped COLA. At the same time the general City Budget, and taxes and revenues have increased. The City has either spent the \$43 million for other purposes

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<sup>16</sup>*Id.*, 63a.

<sup>17</sup>*Id.*, 64a.

<sup>18</sup>*Ibid.*

deemed more important, or maintained it as part of the general reserve fund.<sup>19</sup>

Based on these determinations, the trial court concluded that the City's decision to spend for other purposes the money necessary to fund respondents' uncapped COLAs "may make good 'political' sense," but is not justified under the Contract Clauses of the California and United States Constitutions.<sup>20</sup> The court of appeal concurred.<sup>21</sup>

The trial court also found that as of June 1982, the Los Angeles police and fire pension systems had a \$3.37 billion "unfunded accrued actuarial liability," consisting of the excess of the present value of the systems' projected liabilities over the present value of the systems' assets, expected income from those assets, and the normal contributions which the City Charter requires the City and the affected police officers and firefighters to make in the future.<sup>22</sup> Petitioners pointed to this fact as a purported justification for the enactment of Charter Amendment H. However, the trial court found, based on the testimony of *petitioners'* expert witnesses, that the existence and size of this unfunded liability was largely caused by acts and omissions of petitioners themselves in the administration of the pension systems over the years.<sup>23</sup> The court of appeal sustained this finding of the trial court and held that "any instability or loss of

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<sup>19</sup>*Id.*, 67a.

<sup>20</sup>*Id.*, 64a.

<sup>21</sup>Court of Appeal decision, 210 Cal.App.3d at 1114, App. 22a-23a.

<sup>22</sup>Trial court decision, App. 57a.

<sup>23</sup>*Id.*, 57a-58a. These included:

- the funding of the Article XVII pension system on a pay-as-you-go basis from 1923 until 1959;
- the commencement of the Article XVIII pension system on July 1, 1967, with an actuarially unfunded liability of \$258 million transferred from the Article XVII system;

integrity and soundness in the pension systems resulted principally from the foregoing acts and omissions [of petitioners], not from full cost of living adjustments indexed to the Consumer Price Index.”<sup>24</sup> Citing *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal.3d 296, 313, 152 Cal.Rptr. 903, 591 P.2d 1 (1979), the court of appeal held that a public entity cannot justify the impairment of public employees’ pension rights on the basis of an alleged fiscal crisis which was created by the entity’s own voluntary conduct.<sup>25</sup> The court of appeal also held that of the other three alleged “important public purposes” offered by petitioners to justify Charter Amendment H—their desire to (1) spend City revenues for other purposes deemed more important,

- 
- the establishment in 1967 of a 70-year unfunded liability amortization period for the Article XVII and Article XVIII pension systems;
  - the failure of petitioner Pension Board, when recommending the City contributions necessary to finance the pension systems, to make realistic assumptions respecting annual increases in the Consumer Price Index upon which annual pension adjustments are based;
  - the failure of petitioner Pension Board, prior to 1976, to consider in its annual valuation of the pension systems projected salary increases of active members, even though such increases directly affect the size of members’ pensions;
  - the failure of petitioner Pension Board, after 1976, to make realistic assumptions of the salary increases which would be granted active members of the pension systems; and
  - the City’s decision in 1976 to change from level-dollar annual payments to amortize the pension systems’ unfunded liability to payments calculated as a percentage of Los Angeles police and fire departments payroll, thus decreasing the City’s contributions in earlier years and increasing them in later years.

<sup>24</sup>Court of appeal decision, 210 Cal.App.3d at 1112-13, App. 20a.

<sup>25</sup>*Id.*, 210 Cal.App.3d at 1113, App. 20a.

(2) be able to plan better for long-range budgeting, and (3) improve the morale of City employees not entitled to an uncapped COLA—none justified the substantial impairment of vested contractual pension rights caused by Charter Amendment H.<sup>26</sup>

## REASONS WHY THIS CASE SHOULD NOT BE REVIEWED ON WRIT OF CERTIORARI

### I. The Petition for Certiorari Should be Denied Because This Case Was Decided Below Primarily on State Grounds.

In deciding this case, the lower courts relied primarily upon well-settled California decisional law, discussed *infra*, respecting the inviolability of the pension rights and benefits of California public employees. California cases decided during a period of over 40 years had established that (1) the right of a California public employee to qualify for the pension benefits then in effect vests upon his acceptance of public employment;<sup>27</sup> (2) the public employer cannot eliminate or impair the employee's contractual right to qualify for and receive those pension benefits;<sup>28</sup> (3) a public employee also has a vested right to receive any new benefits provided for by changes in the pension system made during the employee's period of service;<sup>29</sup> and (4) any modification of public employees' pension rights must bear some material relation to the theory of a pension system and its successful operation and disadvantageous modifications should be accompa-

<sup>26</sup> *Id.*, 210 Cal.App.3d at 1114-1115, App. 22a-24a.

<sup>27</sup> *Kern v. City of Long Beach*, 29 Cal.2d 848, 852-53, 179 P.2d 799 (1947).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Betts v. Board of Administration of the Public Employees Retirement System*, 21 Cal.3d 859, 866, 148 Cal.Rptr. 158, 582 P.2d 614 (1978).

nied by comparable new advantages.<sup>30</sup> Based on these decisions, the trial court held that the COLA-capping City Charter provisions enacted by Charter Amendment H are invalid and unenforceable "because each of them is a law impairing the obligation of contract within the meaning of Article 1, Section 9, of the Constitution of the State of California" — *before* the court made reference to Article 1, § 10, cl. 1 of the Constitution of the United States as an additional ground of decision.<sup>31</sup>

That the decisions below are firmly grounded on the California Contract Clause, as well as California decisional law, is supported by three additional considerations. *First*, article I, section 24 of the California Constitution provides that "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." *Second*, California courts have consistently and uniformly held that the California Constitution is not a clone of its federal counterpart but an independent force. Thus, in *In re William G.*, 40 Cal.3d 550, 221 Cal.Rptr. 118, 709 P.2d 1287 (1985), the California Supreme Court, in holding that the defendant's right to be free from unreasonable searches and seizures had been violated, said:

We rest our decision on both state and federal law. Unless otherwise indicated, references to the Fourth Amendment are also intended to refer to article I, section 13, of the California Constitution. Similarly, the federal cases upon which we rely are intended to also support certain aspects of *the independent state grounds of our decision*, as the federal cases prescribe the minimum standards that may not be violated. "This court has always assumed the *independent*

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<sup>30</sup>*Allen v. City of Long Beach*, 45 Cal.2d 128, 131, 287 P.2d 765 (1955).

<sup>31</sup>Trial court decision, App. 68a; trial court judgment, App. 70a-71a.

vitality of our state Constitution. In the search and seizure area our decisions have often comported with federal law, yet there has never been any question that this similarity *was a matter of choice and not compulsion.*" ([Citation]; see also art. I, section 24, Cal. Const.: "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.") . . .

(*Id.*, 40 Cal.3d at 557-558, n.5 (citations omitted; emphasis added).) See, also, *People v. Brisendine*, 13 Cal.3d 528, 548-550, 119 Cal.Rptr. 315, 531 P.2d 1099 (1975); *People v. Houston*, 42 Cal.3d 595, 609, 230 Cal.Rptr. 141, 724 P.2d 1166 (1986); *People v. Mayoff*, 42 Cal.3d 1302, 1312, 233 Cal.Rptr. 2, 729 P.2d 166 (1986).

Third, in 1979 the California voters approved constitutional initiative Proposition 1, which amended article I, section 7 of the California Constitution. The amendment prohibited California courts from going beyond the requirements of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution in the use of pupil assignment and school busing as remedies for racial discrimination in public education. The amendment overruled California decisions ordering such remedies in the absence of intentional segregation, a prerequisite under federal law. Proposition 1 is relevant here in two respects: (1) the amendment to article I, section 7, is narrowly limited to a specific type of case arising under the equal protection provision of the California Constitution; all other provisions of the state Constitution remain independent of the U.S. Constitution; and (2) the amendment demonstrates that the independent force and effect of the California Constitution is so fundamental that a constitutional amendment is necessary to overcome that independence in a particular instance.

Based on the foregoing, it is clear that the California Contract Clause and well-established principles of Cali-

for California decisional law were relied upon by the trial and appellate courts below as the primary bases for holding Charter Amendment H invalid.

## **II. The Petition Should Be Denied Because There are no Special And Important Reasons For Review of This Case on Writ of Certiorari.**

Review on writ of certiorari will be granted "only when there are special and important reasons therefor." Supreme Court Rule 17. Such reasons are not present in this case because the decisions below were based on the resolution of factual issues unique to this controversy. At the trial, which lasted 10 days, respondents first proved the existence and impairment of their vested contractual rights to uncapped COLA benefits and rested. Petitioners then undertook the burden of proving their affirmative defense, that the impairment was justified because of the future cost of the COLAs capped by Charter Amendment H. In support of that effort, petitioners called 11 witnesses, including four expert witnesses,<sup>32</sup> and introduced 130 exhibits. In rebuttal, respondents called three expert witnesses and introduced 19 exhibits. After weighing this conflicting evidence, the trial court held that petitioners had not carried their burden of proof on the impairment issue and entered a judgment for respondents. The judgment was affirmed by the court of appeal and the California Supreme Court declined to review the appellate court's decision. There is surely no special or important reason why this Court should undertake to determine whether the California courts correctly resolved the primarily factual issues relating to petitioners' affirmative defense that the City's impairment of respondents' pension benefits was justified because of the City's financial situation.

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<sup>32</sup> Respondents' objections to the testimony of one expert witness was sustained.

### III. The Petition Should Be Denied Because There Is No Conflict Between The Decision of The California Court of Appeal And That of The Fourth Circuit Court of Appeals in *Maryland State Teachers Ass'n v. Hughes*.

There is no conflict between the decision of the California Court of Appeal in this case and the per curiam decision of the Fourth Circuit Court of Appeals in *Maryland State Teachers Assn. v. Hughes*, 594 F. Supp. 1353 (D. Md. 1984), *aff'd*, No. 84-2213 (4th Cir. Dec. 5, 1985), App. 211a. This is because the State of Maryland has specifically reserved the unlimited power unilaterally to amend or alter public employee contracts. *Id.*, 594 F. Supp. at 1362. Maryland thus does not confer vested contract status on public employee pension benefits. Applying this Maryland law, the district court held in the *Maryland Teachers* case that the pension rights and benefits of Maryland teachers were not impaired by statutes imposing a COLA cap on "unearned" benefits. 594 F. Supp. at 1364. The Court of Appeals affirmed.

California law is, of course, completely to the contrary, as shown by the decisions below and such other decisions as *Pasadena Police Officers' Association v. City of Pasadena*, 147 Cal.App.3d 695, 701, 195 Cal.Rptr. 339 (1983); *Allen v. City of Long Beach*, 45 Cal.2d 128, 131, 287 P.2d 765 (1955); and *Kern v. City of Long Beach*, 45 Cal.2d 848, 852-53, 179 P.2d 799 (1947).<sup>33</sup> Accordingly, this case presents no conflict, within the meaning of Rule 17.1.(b), between the decision of the California Court of

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<sup>33</sup>Moreover, the district court in the *Maryland* case concluded that: the state's obligation to fund its teachers' retirement system was not a clear financial obligation within the meaning of *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1977). *Id.*, 594 F. Supp. at 1370-71. Whatever may be the merit of that view, there could be no clearer financial obligation of a municipality than that of petitioners to pay pensions, including applicable COLAs, when they fall due.

Appeal and the per curiam decision of the Fourth Circuit Court of Appeals in the *Maryland Teachers* case. Nor does the case otherwise merit review on writ of certiorari, for the reasons discussed above.<sup>34</sup>

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<sup>34</sup>Petitioners also rely on *Amalgamated Transit Union Local 589 v. Commonwealth of Massachusetts*, 666 F.2d 618 (1st Cir. (1981), *cert. denied*, 475 U.S. 1117 (1982), which rejected a federal Contract Clause challenge to Massachusetts statutes that plaintiff Union contended impaired arbitration provisions in its contract with the publicly owned Transit Authority (petition, pp. 25-26). The court there held that plaintiffs did not have a contract right to retention of the arbitration provisions under Massachusetts law (which itself distinguishes that case from this one) but nevertheless proceeded to discuss the Contract Clause question. Central to the court's conclusion was its view that the challenged legislation did not affect *substantive contract rights* but only the Union's *procedural remedy* of arbitration — a remedy which the court doubted could have played more than a small role in inducing an employee to work for the Transit Authority. *Id.*, 666 F.2d at 640. In contrast, respondent's vested contractual pension rights impaired by Charter Amendment H are clearly substantive and of the type that have always been accorded the highest degree of protection by California courts. *See, e.g., Carman v. Alvord*, 31 Cal.3d 318 at 325, fn. 4, 182 Cal.Rptr. 506, 644 P.2d 192 (1982). *See, also, United States Trust Company of New York v. New Jersey*, *supra*, 431 U.S. 1 at 19, fn. 17 ("a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement").

**IV. The Petition for Certiorari Should be Denied Because the Courts Below Correctly Decided That Charter Amendment H Violates the California Constitution, California Law and the Federal Contract Clause.**

**A. Respondents Have a Vested Contractual Right to The COLA Benefits Which Charter Amendment H Impaired.**

**1. The Existence and Extent of Respondents' Pension Rights and Benefits Must Be Determined by Reference to California Law. —**

Petitioners contend that this Court should independently determine "whether there was a contract within the meaning of the federal Contract Clause," citing *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1932), for the proposition that in a case involving the federal Contract Clause, the existence of the contract and the nature and extent of its obligations become federal questions on which finality cannot be accorded to the views of a state court. (Petition, p. 9.) Respondents do not deny that this Court made that statement in *Irving* and has made substantially similar statements in other cases. However, there are several reasons why the Court would not be warranted in determining that respondents do not have vested contractual rights to the COLA pension benefits impaired by Charter Amendment H.

*First*, with but few exceptions, this Court has reversed a state court decision concerning the existence or obligations of a contract only when the state court had held that the claimed contractual obligation did not exist, i.e., when the Court's independent determination was necessary to make effective the federal constitutional protection em-

bodied in the Clause.<sup>35</sup> In this case, the California courts below held that a contract both existed and was impaired.

*Second*, when in federal Contract Clause cases the Court has made an independent determination respecting the existence and obligations of the contract in issue, the Court has based its decision in each case on a close analysis of the law of the state in which the case arose, not on a separate body of contract law promulgated by this Court.<sup>36</sup> Indeed, no other mode of decision would be permissible, at least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), was decided.

*Third*, the Court has frequently said that in determining the existence and obligations of a contract in federal Contract Clause cases, the Court gives great deference to the decisions of the state courts on that issue.<sup>37</sup> The decisions of the courts below are entitled to that deference in this case.

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<sup>35</sup> *State v. Brand*, 303 U.S. 95 (1938); *Coombs v. Getz*, 285 U.S. 434 (1931); *Mississippi v. Miller*, 276 U.S. 174 (1928); *Appleby v. City of New York*, 271 U.S. 364 (1925); *Columbia Railway, Gas & Electric Co. v. State of South Carolina*, 261 U.S. 236 (1923); *Detroit United Railway v. Michigan*, 242 U.S. 238 (1916); *Grand Trunk Western R. Co. v. City of South Bend*, 227 U.S. 544 (1913); *Stearns v. State of Minnesota*, 179 U.S. 223 (1900); *Houston & T. C. R. Co. v. Texas*, 177 U.S. 66 (1900); *McCullough v. Commonwealth of Virginia*, 172 U.S. 102 (1898); *Mobile & C. R. Co. v. State of Tennessee*, 153 U.S. 486 (1894).

<sup>36</sup> See cases cited in footnote 35.

<sup>37</sup> *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168, 170 (1947) ("It is not for us to read such a local law with independent but innocent eyes, heedless of a construction put upon it by a local court"); *New York Rapid Transit Corporation v. City of New York*, 303 U.S. 573, 593 (1938) (in determining the existence and meaning of a contract, this Court leans toward agreement with the courts of the state and accepts their statement unless it is manifestly wrong); *State v. Brand*, 303 U.S. 95, 100 (1938); *Coombs v. Getz*, 285 U.S. 434, 441 (1931); *Stearns v. Minnesota*, 179 U.S. 223, 233-34 (1900).

*Fourth*, there can be no doubt that an independent examination of California law by this Court would disclose that — as is demonstrated in the following section of this brief — respondents have a vested contractual right to the COLAs impaired by Charter Amendment H. It is this law which the courts below applied in deciding the case.<sup>38</sup> Petitioners argued strenuously below (including in their unsuccessful petition for review to the California Supreme Court) that the well-settled California law respecting the inviolability of the pension rights and benefits of public employees is wrong, anomalous, and undesirable as a matter of public policy.<sup>39</sup> Even if those arguments were well-founded — which respondents deny — that would be irrelevant here. The relevant question is what the law of California is, not whether it reflects what petitioners contend is the better view.<sup>40</sup> Petitioners' public policy arguments regarding California public employee

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<sup>38</sup>Trial court decision App. 65a; court of appeal decision, 210 Cal.App.3d at 1102-04, App. 3a-6a; *see also*, *Carman v. Alvord*, 31 Cal.3d 318, 332, 182 Cal.Rptr. 506, 644 P.2d 192 (1982) ("This Court has said that '[t]he pension provisions of a City Charter or ordinance form an integral part of the employment contract.'").

<sup>39</sup>Petitioners contend that the court of appeal characterized the difference between the pension rights and the other rights of California public employees as "an anomaly" (petition, p. 8). What that court in fact said was that "If this creates an anomaly in the law, it is one sanctioned by the California Supreme Court" (court of appeal decision, 210 Cal.App.3d at 1105, App. 8a; *emphasis added*).

<sup>40</sup>Petitioners contend that respondents do not have a contractual right to uncapped COLA benefits. True, the parties did not enter written contracts which included such provisions. But it is hornbook law that a unilateral contract results when one party offers benefits or other consideration in exchange for an act by the other and the act then follows in response to the offer. 1 Witkin, *Summary of California Law, Contracts* § 14, pp. 48-49 (9th ed. 1987); Restatement of Contracts, Second, §§ 18, 19, 29, 30 (1981); 1 Williston *Contracts* §§ 22A, 36, 65, 68 (3d ed. 1957).

pensions are properly addressed to the California legislature and California courts — not to this Court.

**2. Respondents Had and Have a Vested Contractual Right Under California Law to the COLA Benefits Which Charter Amendment H Impaired.**

Under California law, a public employee's right to a pension "is among those rights clearly 'favored' by the law." *Hittle v. Santa Barbara County Employees Retirement Assn.*, 39 Cal.3d 374, 390, 216 Cal.Rptr. 733, 703 P.2d 73 (1985). It has long been settled that pension laws are to be liberally construed and applied, to protect pensioners and their dependents against economic insecurity. *Ibid.* California courts have consistently held that a California public employee has a vested contractual right to qualify for the pension benefits in effect when he commences employment and that this right cannot be substantially impaired by the employing public entity.

In the seminal case, *Kern v. City of Long Beach*, 29 Cal.2d 848, 851-56, 179 P.2d 799 (1947), the California Supreme Court held that (1) the right to qualify for the pension benefits then in effect vests upon acceptance of public employment, (2) the public employer cannot eliminate or impair the employee's contractual right to qualify for and receive pension benefits after that right has vested and (3) the purpose of this rule of vesting is to make effective and enforceable the promise of pensions to government employees to induce competent persons to enter and remain in public employment. In *Betts v. Board of Administration of the Public Employees Retirement System*, 21 Cal.3d 859, 866, 148 Cal.Rptr. 158, 582 P.2d 614 (1978), the California Supreme Court held that a public employee has a vested right to receive, *in addition* to the benefits in effect upon commencement of his employment, any new benefits provided for by changes in the pension system made during the employee's period of service.

*Accord, Olson v. Cory*, 27 Cal.3d 532, 539-40, 178 Cal.Rptr. 568, 636 P.2d 532 (1980).<sup>41</sup>

The California Supreme Court has *never* upheld a statute or charter amendment which diminished the pension rights of public employees. The Court has said that some modifications may be made to a pension system prior to a public employee's retirement, but has placed severe restrictions upon the circumstances under which this may be done.

The leading California case on pension system modifications, *Allen v. City of Long Beach*, 45 Cal.2d 128, 287 P.2d 765 (1955), involved the validity of 1951 Long Beach City Charter amendments that attempted to impair the pension benefits of police officers and firefighters employed prior to 1945. In reversing the trial court's judgment upholding these modifications, the California Supreme Court said:

An employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system . . . *Such modifications must be reasonable*, and it is for the courts to determine upon the facts of each case

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<sup>41</sup>Other cases in which California courts have struck down attempted impairments of public employee pension benefits include *Hittle v. Santa Barbara Courts Employees Retirement Assn.*, 39 Cal.3d 374, 216 Cal.Rptr. 733, 703 P.2d 73 (1985); *California Teachers Assn. v. Cory*, 155 Cal.App.3d 494, 202 Cal.Rptr. 611 (1984); *Pasadena Police Officers v. City of Pasadena*, 147 Cal.App.3d 695, 195 Cal.Rptr. 339 (1983); *Valdes v. Cory*, 139 Cal.App.3d 773, 189 Cal.Rptr. 212 (1983); *Olson v. Cory*, 27 Cal.3d 532, 178 Cal.Rptr. 568, 636 P.2d 532 (1980); *Abbott v. City of Los Angeles*, 50 Cal.2d 438, 326 P.2d 484 (1958); cf. *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal.3d 296, 152 Cal.Rptr. 903, 591 P.2d 1 (1979) (attempted impairment of salary increase held invalid).

what constitutes a permissible change. *To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.* *Id.*, 45 Cal.2d at 131, 287 P.2d 765 (emphasis added; citations omitted).

Petitioners' argument that California public employees have vested contract rights only to pension benefits "earned" at a given point in time and that their right to qualify for additional benefits by future services may therefore be impaired prospectively finds no support in California decisions. To the contrary, in *Carman v. Alvord*, 31 Cal.3d 318, 325, 182 Cal.Rptr. 506, 644 P.2d 192 (1982), the California Supreme Court said:

By entering public service an employee obtains a vested right to earn a pension on terms substantially equivalent to those then offered by the employer.

To the same effect, see *Betts v. Board of Administration*, 21 Cal.3d 859, 863, 148 Cal.Rptr. 158, 582 P.2d 614 (1978); *Kern v. City of Long Beach*, 29 Cal.2d 848, 855, 179 P.2d 799 (1947). Accordingly, the distinction which petitioners seek to create between the protection afforded "earned" versus "unearned" pension benefits was properly rejected by the courts below, as it was in *Pasadena Police Officers Ass'n. v. City of Pasadena*, 147 Cal.App.3d 695, 195 Cal.Rptr. 339 (1983), wherein the court rejected the contention that *Allen v. City of Long Beach*, *supra*, does not preclude prospective modifications of a public employee pension system. The *Pasadena* court pointed out that the "earned" versus "unearned" distinction urged by the City of Pasadena is totally inconsistent with the statement quoted above from *Carman v. Alvord*, *supra*, 31 Cal.3d 318, 325, 182 Cal.Rptr. 506, 644 P.2d 192. The

California Supreme Court denied the City of Pasadena's petition for review of the court of appeal's decision.

Rejection of the "earned" versus "unearned" distinction urged by petitioners is not only the settled law of California; it is also right on the merits. If petitioners were correct on this issue, it would follow that a California public employer could not only *reduce* "unearned" COLAs but could *completely eliminate* such COLAs. Moreover, if petitioners were correct, a public employer could arbitrarily reduce "unearned" *basic pension benefits* — or even abolish a public pension system at any point in time, save for paying its employees the pension benefits they had "earned" prior to that date. For a police officer or firefighter in mid-career that would clearly be an egregious breach not only of contract but of faith. Moreover, it would be inconsistent with over 40 years of decisions by the California courts which have spelled out and protected the pension rights and benefits of public employees.

In this case, as in *Pasadena*, petitioners' "earned" versus "unearned" argument is based principally on the fallacious contention that a line of California decisions beginning with *Palaske v. City of Long Beach*, 93 Cal.App.2d 120, 208 P.2d 764 (1949), and culminating in *Houghton v. City of Long Beach*, 164 Cal.App.2d 298, 330 P.2d 918 (1958), supports that purported distinction. This argument was firmly rejected by the courts below and by the court of appeal in *Pasadena Police Officers Ass'n v. City of Pasadena*, *supra*, 147 Cal.App.3d 695, 705-06, 195 Cal.Rptr. 339.<sup>42</sup>

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<sup>42</sup> Petitioners also contend that a contract incorporates the law existing as of the time of its formation, that *Houghton v. City of Long Beach* was the law in 1971 when the COLAs were uncapped, and that Charter Amendment H is therefore valid. This contention is plainly wrong because in *Pasadena* the California Court of Appeal rejected that very contention, holding, in effect, that *Allen v. City of Long*

**B. The Petition For Certiorari Should Be Denied Because The Courts Below Correctly Held That Charter Amendment H Violates the Federal Contract Clause.**

**1. Charter Amendment H Is Invalid Under United States Trust Company of New York v. New Jersey, 461 U.S. 1 (1977).**

Petitioners contend, in effect, that insofar as the federal Contract Clause is concerned, a public entity may elect not to pay its creditors and, instead, spend its funds for other purposes. Petitioners do not seemingly acknowledge *any* constitutional limitation on this alleged freedom of election, insisting that the courts must defer to a public entity's decision whether or not to honor its legal obligations (petition, pp. 22-29).

In purported support of their contention, petitioners seize upon the statement in the *United States Trust Company* opinion that an impairment by a public entity of its own contractual obligation "may be constitutional if it is reasonable and necessary to serve an important public purpose." *Id.*, 461 U.S. at 25. Ignoring the fact that the very next sentence in the opinion states that "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because a State's self interest is at stake," petitioners argue that *United States Trust Company* gives *carte blanche* to a public entity to

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*Beach*, *supra*, 45 Cal.2d 128, overruled the *Palaske* line of cases and that *Houghton* is not inconsistent with *Allen*. Thus, *Allen v. Long Beach* was the law and became a part of the contracts made between petitioners and respondents in and after 1971, thereby guaranteeing contractually that to which respondents were otherwise entitled by law: that their COLA benefits would remain uncapped unless and until modified in accordance with the restrictions imposed by that landmark decision. For this reason, among others, the advice allegedly given by the City Attorney to the City Council in 1971 (petition, p. 3) was wrong.

repudiate its own contractual obligation whenever it chooses to use the money for a different purpose (petition, pp. 22-29). However, as the following discussion demonstrates, the courts below properly held that *United States Trust Company* does not justify but, to the contrary, *condemns* the impairment of vested contractual-pension rights effected by Charter Amendment H.

In *United States Trust Company* a 1962 statutory covenant between the States of New Jersey and New York limited the ability of their joint agency, the Port Authority of New York and New Jersey, to subsidize commuter rail passenger transportation from revenues and reserves pledged as security for consolidated bonds issued by the Port Authority to members of the public. A 1974 New Jersey statute, together with a concurrent and parallel New York statute, purported to repeal the 1962 covenant retroactively. The New Jersey courts upheld the New Jersey statute as a reasonable exercise of the police power. On appeal, this Court reversed, holding the 1974 legislation which impaired the 1962 statutory covenant to be in violation of the federal Contract Clause.

In an opinion by Mr. Justice Blackmun, the Court said that "... the Contract Clause limits otherwise legitimate exercises of State legislative authority, *and the existence of an important public interest is not always sufficient to overcome that limitation.*" *Id.*, 431 U.S. at 21 (emphasis added). The Court drew a key distinction between the level of scrutiny applied to impairments *where the public entity is itself the contracting party*, and the level of scrutiny applied when private contracts are impaired. Noting that it "has regularly held that the States are bound by their debt contracts," the Court said:

... The Contract Clause is not an absolute bar to subsequent modification of a State's own financial obligations. . . . an impairment may be constitutional if it is reasonable and necessary to serve an impor-

tant public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate *because the State's self-interest is at stake*. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. *If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all*. *Id.*, 431 U.S. at 25-26 (emphasis added).

The Court added that "... [a] State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors ...." *Id.*, 431 U.S. at 29.

In this case, City officials acknowledged that Charter Amendment H was placed on the June 8, 1982 ballot because the City desired to use for other purposes the \$32 million by which its annual contribution to the pension systems would be reduced, as of that date, if Charter Amendment H was approved by the voters. Trial testimony of City Mayor Bradley, R.T. 987:18-988:3; trial testimony of City Councilman Yaroslavsky, R.T. 935:9-21; 936:14-21. Citing *United States Trust Company*, as well as California authorities, the trial court held and the court of appeal agreed that the City's desire to spend this money for other purposes did not justify the impairment of the City's contractual obligations to its police officers and firefighters.<sup>43</sup> As both courts below correctly perceived, *United States Trust Company* clearly teaches that the City is barred by the federal Contract Clause from electing to spend for other purposes the money needed to honor the

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<sup>43</sup>Trial court decision, App. 66a-67a; court of appeal decision, 210 Cal.App.3d at 1108-11, App. 13a-26a.

obligation which the City assumed in 1971 to maintain the purchasing power of respondents' pensions.<sup>44</sup>

Petitioners failed entirely to show that the City was or is unable to continue to pay the COLAs which were capped by Charter Amendment H. To the contrary and as summarized above (p. 5, *supra*), the evidence showed that the required additional \$43 million annual pension contribution is less than 2% of the City's general budget (a percentage that will diminish as the City's budget increases), that the City's expenditures increased by approximately \$200 million (10%) *per year* after Charter Amendment H was enacted, and that in less than a year following its enactment, the City imposed \$120-\$130 million in *new* taxes to meet an anticipated budget shortfall. Clearly, the City's problem is not poverty but lack of the political will to take the actions necessary to meet its obligations to fund the Article XVII and Article XVIII pension systems. Accordingly, the courts below correctly found unpersuasive the purported justification of Charter Amendment H offered by petitioners.

## 2. The Impairment Caused by Charter Amendment H Is Severe.

In *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1978), wherein this Court struck down under the federal Contract Clause a 1974 Minnesota statute that subjected specified private employers to a "pension fund-

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<sup>44</sup>Petitioners contend that the trial court found that Charter Amendment H was enacted to accomplish several specific public purposes (petition, p. 22). This contention is less than accurate. At App. 61a-62a, cited by petitioners, the trial court said only that defendants *contended* that *some* of these public purposes are served by Charter Amendment H. At App. 66a, the trial court said that the purposes for which Amendment H was enacted were important public purposes without defining what those purposes were.

ing charge" if they terminated a qualified pension plan or closed a Minnesota office, the Court said:

... the first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimum alteration of contractual obligations may end the inquiry at its first stage. *Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.* *Id.* 438 U.S. at 244-45 (fn. omitted; emphasis added).

As shown above (pp. 1-2, *supra*) there is no question in this case that the impairment of vested contractual rights caused by Charter Amendment H is severe, involving potential losses of hundreds of thousands or even millions of dollars in the case of some pension system members and their spouses.<sup>45</sup>

### 3. The City Is Able to Raise The Revenues Necessary to Fund the Pension Systems.

Adoption of Charter Amendment H was not reasonable and necessary in 1982 because the City had ample means available to raise the funds necessary to fund the COLAs which were capped. To begin with, the City both had the power and was under a legal duty to levy taxes for that purpose. City Charter §§ 186.2 and 190.09 provide that:

For the purpose of providing funds to meet the budget [of the Article XVII and Article XVII pension systems, respectively], the [City] Council or the Controller annually *shall* levy, in *addition* to all other taxes levied by the City, a tax *clearly sufficient* to

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<sup>45</sup>In contrast, the impairment of the security interests of Port Authority bondholders in the *United States Trust Company* case was more technical than it was economically damaging or threatening.

provide the total amount of *all* items in said budget (emphasis added).

As the trial court held,<sup>46</sup> by virtue of these provisions the City had both the power and the duty to levy whatever taxes were necessary to fund the pension systems.

Petitioners' response to respondents' reliance on City Charter §§ 186.2 and 190.09 was the astonishing testimony that the Los Angeles City Council simply *will not comply* with its legal obligation to levy the mandated taxes. Trial testimony of City Councilman Yaroslavsky, R.T. 924:1-8; trial testimony of City Chief Administrative Officer Comrie, R.T. 669:20-670:14. It is thus apparent that the "dilemma" and prospective "financial crisis" with which petitioners say they were and are faced was and is entirely of their own making.

In the courts below petitioners contended that the City is not able to levy the taxes mandated by City Charter §§ 186.2 and 190.09 because of the enactment in 1983 of California Revenue and Taxation Code §§ 97.2 and 97.6, which purport to impose a dollar-for-dollar penalty on any city, county or special district that levies a real property tax rate in excess of the rate imposed in fiscal year 1982-83 for the purpose of funding the payment of a voter-approved indebtedness, such as a public employee pension system. This contention is without merit.

Revenue and Taxation Code §§ 97.2 and 97.6 apply only to additional *real property taxes* imposed to pay pension system costs, whereas the duty mandated by City Charter §§ 186.2 and 190.09 is *not limited* to the imposition of real property taxes. Moreover, as the court of appeal held, if §§ 97.2 and 97.6 were interpreted to disable the City from complying with its duty to honor the vested contractual rights of its police officers and firefighters, these statutes

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<sup>46</sup>Trial court decision, App. 67a.

would themselves be invalid under the federal Contract Clause.<sup>47</sup>

Moreover, the trial testimony of respondents' municipal finance expert, Douglas Ayres, demonstrated that the City has available other methods than increased taxation to continue to fund the COLAs which were capped by Charter Amendment H, *i.e.*, new or enhanced user fees. R.T. 1046-72. Many such non-tax-revenue enhancements, most notably the imposition by the City of a refuse collection fee (imposed by many municipalities), have been recommended in various City-sponsored reports suggesting means of raising substantial additional revenue to provide increased levels of police protection and other City services. *See, e.g.*, Trial Exhibit 174, 9 C.T. 3156; Trial Exhibit 175, 9 C.T. 3171; Trial Exhibit 176, 9 C.T. 3180-81; and Trial Exhibit 177, 9 C.T. 3191.

#### 4. The Risk of the Inflation Which Increased Pension System Costs Was Foreseen in 1971.

A consideration relevant to the validity of a public entity's attempted impairment of its own obligation is the foreseeability of the circumstances said to justify the

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<sup>47</sup>Court of appeal decision, 210 Cal.App.3d at 1114, App. 22a. A state may not prevent the fulfillment by a municipality of its duty to pay its legal obligations by depriving the municipality of the taxing power required to raise the needed funds. *Louisiana ex rel. Hubert v. New Orleans*, 215 U.S. 170, 175-76 (1909) ("... where a municipal corporation is authorized to contract, and to exercise the power of local taxation to meet its contractual engagements, this power must continue until the contracts are satisfied ... and ... it is an impairment of the obligation of the contract to destroy or lessen the means by which it can be enforced."); *Wolff v. New Orleans*, 103 U.S. 358, 365 (1880); *Van Hoffman v. City of Quincy*, 71 U.S. (4 Wall) 535, 554 (1867); *see also United States Trust Company of New York v. State of New Jersey*, *supra*, 431 U.S. at 24 n.22; *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal.3d 296, 314, n. 17, 152 Cal.Rptr. 903, 591 P.2d 1 (1979); *Carman v. Alvord*, 31 Cal.3d 318, 332-33, 182 Cal.Rptr. 506, 644 P.2d 192 (1982).

impairment. *United States Trust Co. of New York v. New Jersey*, *supra*, 431 U.S. at 31-33 (majority opinion and concurring opinion of Chief Justice Burger). Petitioners imply that when the COLAs were "uncapped" by Los Angeles voters in 1971 the risk of the high inflation that followed was neither foreseen nor foreseeable. (Petition, p. 3.) This implication was rejected by the court of appeal<sup>48</sup> and is unwarranted for two reasons. Before the Council unanimously voted in 1971 to put on the ballot the City Charter amendment which uncapped the COLAs, the Council was plainly warned that inflation might exceed expectations. The City's then Chief Administrative Officer, C. Erwin Piper, addressing that issue, said:

In the current wage and price spiral, the two percent ceiling on cost-of-living adjustments does not keep pace with the rate of increase in the Consumer Price Index (CPI), which indicates the cost-of-living has increased about five percent over the last year in the Los Angeles area. However, the past history of the CPI indicates that the rate of increase of the CPI is cyclical. There have been several periods like the present with high annual rates of increase followed by relatively stable periods with slow rates of increase, or even a decline in the index. It is probable that the present high rate of increase will not continue indefinitely. *However, we cannot be sure how long the current rate of increase will continue or that it will not change to a higher rate. It, therefore, appears unwise to remove the ceiling on year-to-year increases because of the possible financial cost involved.* 9 C.T. 3071 (emphasis added).

In addition, the very prior existence of the 2% cap which was removed in 1971 shows that City officials had been and were then aware of the risks involved in an

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<sup>48</sup>Court of appeal decision, 210 Cal.App.3d at 1113-14, App. 21a.

uncapped COLA. The policy decision nevertheless made, by both the City Council and Los Angeles voters, was that the citizens of the City, rather than its retired police officers and firefighters, should bear the risk that inflation might outstrip past history and then-current expectations. That assurance having been given — and having resulted in detrimental reliance by respondents — the City's obligation to honor the contractual obligation thus created became irrevocable under the California law discussed above and relied upon by the courts below.

### CONCLUSION

For the reasons set forth above, review of this case on writ of certiorari should not be granted.

DATED: December 15, 1989

Respectfully submitted,

JOHN R. McDONOUGH\*

J. STEVEN GREENFELD

Ball, Hunt, Hart, Brown and  
Baerwitz

LESTER G. OSTROV

Fogel, Feldman, Ostrov,  
Ringler & Klevens

*Attorneys for Respondents*

---

\*Counsel of Record

## PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA        }  
COUNTY OF LOS ANGELES    } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On December 15, 1989, I served the within Brief in Opposition to Petition for a Writ of Certiorari in re: "City of Los Angeles; Board of Pension Commissioners of the City of Los Angeles vs. United Firefighters of Los Angeles City" in the United States Supreme Court, October Term 1989 No. 89-816, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

John Daum, Counsel of Record  
O'Melveny & Myers  
400 South Hope Street  
Los Angeles, California 90071

James K. Hahn  
City Attorney  
1700 City Hall East  
Los Angeles, California 90012

All parties required to be served have been served.



I declare under penalty of perjury that the foregoing is true and correct.

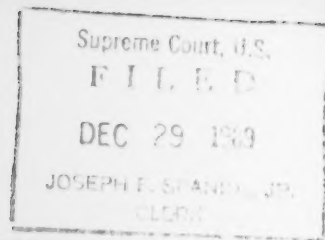
Executed on December 15, 1989, at Los Angeles, California.

*Donna Rodgers*

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DONNA RODGERS

No. 89-816



In the  
Supreme Court of the United States

OCTOBER TERM, 1989

CITY OF LOS ANGELES;  
BOARD OF PENSION COMMISSIONERS  
OF THE CITY OF LOS ANGELES,  
*Petitioners,*

v.

UNITED FIREFIGHTERS OF LOS ANGELES CITY,  
LOCAL 112, IAFF, AFL-CIO;  
LOS ANGELES POLICE PROTECTIVE LEAGUE;  
RONALD DEAN GRAY; DAVID BACA, JR.;  
GREGORY PAUL DUST; BILL G. MCDANIEL;  
and FRED A. TREDY,  
*Respondents.*

REPLY BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI

JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant  
City Attorney  
1700 City Hall East  
Los Angeles, CA 90012

JOHN F. DAUM\*  
KAREN R. GROWDON  
SHARONA HOFFMAN  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 669-6000  
*Counsel for Petitioners*

\*Counsel of Record



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In the  
**Supreme Court of the United States**

OCTOBER TERM, 1989

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CITY OF LOS ANGELES, *et al.*,  
*Petitioners,*

v.

UNITED FIREFIGHTERS OF LOS ANGELES CITY, *et al.*,  
*Respondents.*

---

Petitioners City of Los Angeles and its Board of Pension Commissioners submit this reply brief in support of their petition for a writ of certiorari.

**I. RESPONDENTS' BRIEF AVOIDS THE ISSUES IN THIS CASE.**

Conspicuously absent from Respondents' Brief is a discussion of the merits of the important issues that are raised by the Petition. Respondents' unwillingness to come to grips with those issues is shown dramatically by the very first page of their Brief, where they have manufactured a new list of "Questions Presented." Respondents' list has little in common with the questions that the Petition in fact raises.

The Petition demonstrated that the courts below had departed from this Court's teaching in two important ways:

— The California courts erred in defining the *scope* of the Contract Clause. Although a long line of cases from this Court holds squarely that "the contract clause does not limit the power of a state during the terms of its officers to pass and give effect to laws prescribing for the future the . . . compensation to be

paid to them," *Mississippi ex rel. Robertson v. Miller*, 276 U.S. 174, 178-79 (1928), the courts below used the Contract Clause to invalidate just such a law.

— The California courts also erred in defining the *standard* for finding an unconstitutional impairment of contract. Although this Court long ago abandoned the notion that to justify an impairment there must be a fiscal emergency, and although this Court requires reasonable deference to the other branches of government, the courts below held that only a "genuine emergency or severe fiscal crisis" could justify an impairment, and declined to give any deference to the judgment of Los Angeles' voters and officials that Charter Amendment H was reasonable and necessary to important public purposes. Petition at 21-29.

These issues are obviously, and necessarily, issues of federal law. This Court, not the California courts, has responsibility for defining the scope of the protection afforded by the Contract Clause. *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942); Petition at 9-11. Yet respondents do not attempt to reconcile the decision below with this Court's teaching that the Contract Clause permits local governments to amend statutes so as to modify the compensation they will pay for future services.<sup>1</sup> And although this Court, not the California courts, has responsibility to determine under what circumstances an impairment may be justified as constitutional, respondents make no effort to defend the use by the courts below of the

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<sup>1</sup> Respondents do not even cite the cases from this Court that are directly on point, let alone distinguish them. *Dodge v. Board of Education*, 302 U.S. 74 (1937); *Pennie v. Reis*, 132 U.S. 464 (1889); *Fisk v. Jefferson Police Jury*, 116 U.S. 131 (1885); *United States v. Fisher*, 109 U.S. 143 (1883); *Newton v. Commissioners*, 100 U.S. 548 (1880); *Butler v. Pennsylvania*, 51 U.S. 402 (1850).

"fiscal emergency" standard that this Court has firmly rejected. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410-13 (1983); Petition at 22-29.

It is equally obvious that the issues here are of great public importance, and that they affect not only the parties to this case but potentially all state and local governments and their employees. It is a matter of enormous consequence if — despite over a century of precedent from this Court to the contrary — the Contract Clause will now be held to restrict the right of governments to amend the statutes that prescribe the compensation to be paid to public employees for services to be rendered in the future. See Petition at 7-13. The rule adopted below represents a bold expansion of federal constitutional power over local government, one that is literally without precedent in this Court, and it involves a corresponding contraction of the traditional freedom of states and municipalities to regulate their own employees and to define how much of their limited resources will be spent on employee compensation and how much on other matters.

Revival of the rule that only a fiscal emergency will justify an impairment of a contract would wipe out fifty years of progress in Contract Clause doctrine. Moreover, in circumstances like the ones presented here, it would insure that no alteration in employee compensation or benefit levels, no matter how reasonable and necessary to important public purposes, can be carried out by any state or local government that has not utterly exhausted its taxing power. Such a rule would work a fundamental realignment in the relations among local government, taxpayers, and their employees. Adopting it would not be a small matter.

## II. RESPONDENTS' ARGUMENTS ABOUT STATE LAW LACK SUBSTANCE.

Rather than addressing on their merits the issues raised by the Petition, respondents seek to avoid them by making two closely related arguments about state law. Neither argument is sustainable.

Respondents suggest first that review should be denied because the decision below supposedly rested on the contract clause of the California constitution. Brief in Opposition ("Opposition") at 9-12. This Court's cases, however, are clear that when a state court wishes its decision to be treated as resting on a state constitutional provision that is similar to a federal one, the state court must make a "plain statement" to that effect. *Michigan v. Long*, 463 U.S. 1032, 1040-42 (1983); *New York v. Class*, 475 U.S. 106, 109-10 (1986); *Maryland v. Garrison*, 480 U.S. 79, 83 (1987). The court below made no such "plain statement." The absence of a "plain statement" is highlighted by respondents' citation to *In re William G.*, 40 Cal.3d 550, 221 Cal.Rptr. 118, 709 P.2d 1287 (1985), since *William G.* shows that California courts know how to make a "plain statement" within the meaning of *Michigan v. Long* — if and when they wish to rest their decision on state law. The court below did not.

Nor do respondents' generalities about the independent importance of the California constitution in other situations have relevance here. "That the [state] court might have, but did not, invoke state law does not foreclose jurisdiction [in this Court.]" *Quinn v. Millsap*, 57 U.S.L.W. 4686, 4688 (June 15, 1989), quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977).

Finally, the court below did not suggest that the protections of the California contract clause differ in any way from those of the federal Contract Clause. Indeed, California cases are explicit that the California contract clause is merely a "parallel proscription" to the federal one. *Allen v. Board of Administration*, 34 Cal.3d 114, 119, 192 Cal.Rptr. 762, 765, 665 P.2d 534, 537 (1983); *Valdes v. Cory*, 139 Cal.App.3d 773, 783, 189 Cal.Rptr. 212, 220 (1983). The situation here is thus in marked contrast to the search-and-seizure cases that respondents cite, where the California courts used to assert, before the people of California overruled them, the independent force of the California constitution.<sup>2</sup>

Respondents also suggest that in holding, contrary to this Court's cases, that unearned pension benefits are protected by the Contract Clause, the court below was ruling on a matter of domestic California law, rather than construing the Contract Clause. This is nonsense. As this Court has repeatedly held and as respondents are forced to admit, a decision about whether "that which a party seeks to have protected under the contract clause . . . is a contract" is necessarily a federal question for this Court to decide, and not a domestic question for the California courts. *Douglas v. Kentucky*, 168 U.S. 488, 501 (1897); *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942); *Munici-*

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<sup>2</sup>The cases respondents cite were overruled in 1982, as to crimes committed thereafter, by the passage of Proposition 8. This initiative provides that the California courts may *not* go beyond this Court's teaching, even in the search-and-seizure area. See *In re Lance W.*, 37 Cal.3d 873, 210 Cal.Rptr. 631, 694 P.2d 744 (1985); *People v. Mayoff*, 42 Cal.3d 1302, 1318n.9, 233 Cal.Rptr. 2, 729 P.2d 166 (1986). Not the least of the problems with the case at bench is that by wrapping its result in a mistaken construction of the federal Constitution, the court below has made impossible a similar legislative correction in the pension area. See Petition at 10-11.

*pal Investors Ass'n v. Birmingham*, 316 U.S. 153, 157 (1942); *United States Mortgage Co. v. Matthews*, 293 U.S. 232, 236 (1934); *Railroad Commission v. Eastern Texas R. Co.*, 264 U.S. 79, 86-87 (1924). This Court's cases, moreover, rest ultimately on the determination that the reserved police power of state and local government — the exercise of which power is not constitutionally subject to the limitations of the Contract Clause — extends to establishing the level of compensation that public employees will be paid for services to be rendered in the future. See *Maryland State Teachers Ass'n v. Hughes*, 594 F. Supp. 1353, 1360, 1362 (D.Md. 1984); *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977); *Newton v. Commissioners*, 100 U.S. 548, 559 (1880); *Butler v. Pennsylvania*, 51 U.S. 402 (1850); *Amalgamated Transit Union Local 589 v. Commonwealth of Massachusetts*, 666 F.2d 618, 641 (1st Cir. 1981). Such a determination, involving fixing the degree of constitutional freedom which the Contract Clause gives to state and local governments so that they may fulfill their functions under our federal system, is not, and by its nature could not conceivably be, a matter of local law.

The court below did not share respondents' error on this point; it recognized that in rendering decision it was interpreting the Contract Clause. The court twice described the issue before it as whether unearned pension benefits were "obligations protected by the contract clause." App. 3a, 8a. And this analysis was entirely in accordance with the California cases generally, which use the phrase "vested contractual right" as a shorthand way of saying that a particular entitlement is protected by the contract clause. See *Kern v. City of Long Beach*, 29 Cal.2d 848, 853, 179 P.2d 799, 802 (1947); *Miller v. State of California*, 18 Cal.3d 808, 815, 135 Cal.Rptr. 386, 390, 557 P.2d 970, 973 (1977); *Allen v. Board of Administration*, 34

Cal.3d 114, 119-20, 192 Cal.Rptr. 762, 765-66, 665 P.2d 534, 537-38 (1983).<sup>3</sup> Indeed, the whole point of an analysis in terms of "contractual rights" is to emphasize that, in situations where no traditional contract exists, the courts need to decide which entitlements will be treated, for Contract Clause purposes, *as if* they were contracts. That task involves interpretation of the Contract Clause, not the domestic law of California. The trouble with the decision below is simply that, purporting to interpret the Contract Clause, the court below got the Contract Clause wrong.<sup>4</sup>

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<sup>3</sup>If any doubt on this point were possible, it would be removed by the California cases that have used the "vested contractual rights" analysis to determine the validity of provisions of the California constitution. This is possible only because the statement that an entitlement is a "vested contractual right" means precisely that it is a right protected by the Contract Clause. See *Lyon v. Flournoy*, 271 Cal.App.2d 774, 779, 76 Cal.Rptr. 869, 874-75 (1969); *Allen v. Board of Administration*, *supra*, 34 Cal.3d at 119, 192 Cal.Rptr. at 765, 665 P.2d at 537.

<sup>4</sup>Respondents' analysis of the California cases is seriously flawed, although as mentioned in the Petition the matter is not of great importance to the issues before this Court. Respondents rely, as did the court below, on dicta in some of the California cases, not on their facts and holdings. Other than the *Pasadena* decision, none of the California cases cited by respondents at pages 18-21 of their Opposition involved a modification, like Charter Amendment H, that affected only unearned benefits. See Petition at 8n.2. The dangers of relying on dicta are shown by respondents' prominent citation of a quotation from *Carman v. Alvord*, 31 Cal.3d 318, 182 Cal.Rptr. 506, 644 P.2d 192 (1982). Opposition at 20. In the sentence immediately preceding the one respondents quote, the *Carman* court defined a public employer's duty as being "to pay pensions promised *and earned*" — a formula that is consistent both with this Court's teaching and with petitioners' position. 31 Cal.3d at 325, 182 Cal.Rptr. at 509, 644 P.2d at 195.

### III. RESPONDENTS' BRIEF DEMONSTRATES THAT THE COURT BELOW APPLIED THE WRONG STANDARD IN JUDGING WHETHER THERE WAS AN UNCONSTITUTIONAL IMPAIRMENT OF CONTRACT.

The court below imposed on petitioners the burden of showing that a "fiscal emergency or severe financial crisis" threatened the City of Los Angeles. App. 22a. As the Petition showed, this was error: an impairment of contract will be justified if it is "reasonable and necessary" to an important public purpose, and the "fiscal emergency" standard is no longer the law. Petition at 27-29. The court below compounded its error by refusing to give any deference to the legislative judgment that Charter Amendment H was "reasonable and necessary" to purposes that even the trial court expressly found were "important." Petition at 21-27.

Far from dispelling petitioners' showing that the courts below applied the wrong standard, respondents' brief confirms it. The extracts from the trial court's opinion which respondents quote, Opposition at 6-7, confirm that, as petitioners contend, the ground of decision below was that an impairment could not be justified absent a showing that the City had exhausted its taxing power. Respondents urge explicitly, as they did below, that this is the proper standard. Opposition at 22-28.

This standard, however, is not the one adopted by this Court in *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). It is not the one adopted by the Fourth Circuit in *Maryland State Teachers Ass'n v. Hughes*, 594 F. Supp. 1353 (D.Md. 1984), *aff'd*, No. 84-2213 (4th Cir. Dec. 5, 1985), App. 211a. In that case, the Fourth Circuit upheld a reform identical to Charter Amendment H even though Maryland retained the *unlimited* taxing power of a sover-

eign state. See 594 F.Supp. at 1364-71. Because the court below was using the wrong standard, it is hardly surprising that, on identical facts, it reached a result opposite to that of the Fourth Circuit. The Fourth Circuit, however, applied correctly this Court's teaching that an impairment may be justified if it is "reasonable and necessary to serve an important public purpose." *U.S. Trust Co., supra*, 431 U.S. at 25-26. The court below did not.

### CONCLUSION.

For the reasons stated herein and in the Petition, this Court should issue a writ of certiorari to the California Court of Appeal, and on the merits should reverse the judgment below.

DATED: December 28, 1989

Respectfully submitted,

JAMES K. HAHN  
City Attorney  
FREDERICK N. MERKIN  
Senior Assistant  
City Attorney  
1700 City Hall East  
Los Angeles, CA 90012

JOHN F. DAUM\*  
KAREN R. GROWDON  
SHARONA HOFFMAN  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 669-6000  
*Counsel for Petitioners*

---

\* Counsel of Record



## PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On December 28, 1989, I served the within Reply Brief in Support of Petition for a Writ of Certiorari in re: "City of Los Angeles; Board of Pension Commissioners of the City of Los Angeles vs. United Firefighters of Los Angeles City" in the United States Supreme Court, October Term 1989 No. 89-816, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

John R. McDonough, Counsel of Record  
Ball, Hunt, Hart, Brown & Baerwitz  
4525 Wilshire Boulevard, 3rd Floor  
Los Angeles, California 90076

Lester G. Ostrov  
Fogel, Feldman, Ostrov, Ringlor & Klevens  
5900 Wilshire Boulevard, Suite 2600  
Los Angeles, California 90036

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 1989, at Los Angeles, California.

Marysue Bushner  
MARYSUE BUSHNER

